CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI AND LEE SAU CHONG,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 16, 1937.

CERTIORARI GRANTED OCTOBER 18, 1937.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI AND LEE SAU CHONG,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

VOL. I

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

For the Plaintiff, United States of America,

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Federal Building,
Honolulu, T. H.

For the Defendants, Robert K. Mookini and Lee Sau Chong,

BARRY S. ULRICH, Esq.,
Dillingham Building,
Honolulu, T. H. [2*]

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the United States District Court for the Territory of Hawaii.

Criminal No. 8518.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT K. MOOKINI, LEE SAU CHONG, WILLIAM E. MILES and JOHN E. CUNNINGHAM,

Defendants.

CLERK'S STATEMENT.

Time of Commencing Suit: March 19, 1935—Indictment filed.

Names of Original Parties: United States of America, Plaintiff; Robert K. Mookini, Lee Sau Chong, William E. Miles and John E. Cunningham, Defendants.

Dates of Filing Pleadings:

March 19, 1935—Indictment.

March 26, 1935—Demurrer of Robert K. Mookini.

March 26, 1935—Demurrer of Lee Sau Chong.

April 8, 1935—Motion for Bill of Particulars (Robert K. Mookini).

April 17, 1935—Motion for Bill of Particulars (Lee Sau Chong).

April 17, 1935—Motion for Severance.

June 7, 1935—Motion for New Trial (Lee Sau Chong).

June 7, 1935—Motion for New Trial (Robert K. Mookini). [3]

Times When Proceedings Were Had:

March 19, 1935—Indictment filed, bonds fixed.
March 21, 1935—Continuance.
March 22, 1935—Arraignment and plea of defendant Cunningham.
March 25, 1935—Continuance.
April 1, 1935—Demurrer filed, continuance for hearing.
April 3, 1935—Hearing on demurrers.
April 8, 1935—Hearing on motion for bill of particulars.
April 13, 1935—Continuance.
April 17, 1935—Hearing on motion for bill of particulars and motion for severance.
April 20, 1935—Hearing on motion for severance.
April 22, 1935—Decision on motion for severance.
April 26, 1935—Case set for trial.
May 13, 1935—Proceedings at trial, continuance for further trial.
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May 20, 1935—Proceedings at further trial, continuance.
May 21, 1935—Proceedings at further trial, continuance.

May 22, 1935—Proceedings at trial, continuance for further trial.

May 23, 1935—Proceedings at further trial, continuance. [4]

May 24, 1935—Proceedings at further trial, continuance.

May 27, 1935—Proceedings at further trial, continuance.

May 28, 1935—Proceedings at further trial.

June 10, 1935—Continuance.

June 14, 1935—Proceedings at hearing on motion for new trial, continuance.

June 19, 1935—Proceedings at further hearing on motion for new trial.

June 29, 1935—Proceedings at sentence.

Proceedings in the above-entitled matter were had before the Honorable S. C. HUBER, District Judge.

Dates of Filing Appeal Documents:

September 27, 1935—Notice of Appeal, Petition for Appeal, Assignment of Errors, Citation issued.

July 5, 1935—Bond (R. K. Mookini).

July 5, 1935—Bond (Lee Sau Chong).

November 13, 1935—Cost Bond.

December 21, 1935—Bill of Exceptions.

September 27, 1935—Praecipe for Transcript of Record. [5]

CERTIFICATE OF CLERK AS TO THE ABOVE STATEMENT.

United States of America,
Territory of Hawaii—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties, the several dates when the respective pleadings were filed; the times when proceedings were had and the names of the judge presiding; the date of the filing and entering of the verdict and the dates when appeal documents were filed and issued in the above-entitled cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of April A. D. 1936.

[Seal] WM. F. THOMPSON, JR.,
Clerk, U. S. District Court, Territory of Hawaii.

[6]

[Title of Court and Cause.]

INDICTMENT.

Counts I and II: Violation of Section 80, Title 18, United States Code (Section 35, C. C.)

A True Bill. Mar. 19, 1935

/s/ DAVID L. OLESON,
Foreman.

/s/ INGRAM M. STAINBACK,
United States Attorney, District of Hawaii.

Filed Mar. 19, 1935 at 12 o'clock and 20 minutes P. M.

WM. F. THOMPSON, JR.,
Clerk.
By /s/ THOS. P. CUMMINS,
Deputy Clerk.

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of the defendants named therein, bail hereby being fixed at $.....

Chong	$1,000
Mookini	$1,000
Miles	$ 500

/s/ EDWARD K. MASSEE,
Judge, United States District Court, Territory of Hawaii. [7]

The United States of America,
District of Hawaii—ss.

COUNT I.

The Grand Jurors of the United States, empaneled, sworn and charged at the term aforesaid, of the Court aforesaid on their oath, present that:

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

on or about the 7th day of June, 1934, at the City and County of Honolulu, Territory of Hawaii,

within said District and within the jurisdiction of this Court, did jointly, knowingly, wilfully, unlawfully and feloniously make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher, dated May 12, 1934, upon and against the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, in the sum of Two Hundred Thirty-one Dollars ($231.00); that is to say, a certain claim and voucher purporting that Lee Chong Company of Honolulu, City and County of Honolulu, Territory of Hawaii, was then, there and thereby entitled to the sum of Two Hundred Thirty-one Dollars ($231.00) for groceries, fruits and vegetables delivered to said Schofield Camp of the Civilian Conservation Corps during the month of May, 1934; that said claim and voucher was then and there, to-wit, at the time of making and presenting thereof as aforesaid, false, [8] fictitious and fraudulent in this: That the following items appearing on said claim and voucher, to-wit:

500 only fresh oysters @$3.50 per hundred	$17.50
4 cases table red apples @$2.55 per case (6 cases billed as delivered—2 only delivered)	10.20
400 lbs. pumpkin @$.04¼ per lb.	17.00
400 lbs. fresh spinach @$.04 per lb.	16.00
400 lbs. white squash @$.05 per lb.	20.00
40 lbs. fresh lima beans @$.08 per lb.	3.20
	$83.90

were not delivered to said Civilian Conservation Camp at all, and that said Lee Chong Company was not entitled to pay therefor, all of which the said

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew at the time of making, causing to be made, and presenting and causing to be presented, said claim and voucher, and that said claim and voucher was then and there false, fictitious and fraudulent, and so the Grand Jurors, on their oath, present that

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

at the City and County of Honolulu, Territory of Hawaii, within said District and within the jurisdiction of this Court, did, on or about the 7th day of June, 1934, make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher upon and against the Schofield Camp of the Civilian Conservation Corps aforesaid, which said claim and voucher they, the said [9]

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew to be false, fictitious and fraudulent; contrary to law and to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to-wit, on or about the 7th day of September, 1934, at the City and County of Honolulu, Territory of Hawaii, within said District and within the jurisdiction of this Court,

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

the identical persons named in the first Count of this indictment, did jointly, knowingly, wilfully, unlawfully and feloniously make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher, dated September 1, 1934, upon and against the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, in the sum of Five Hundred Twenty-six Dollars Sixty Cents ($526.60); that is to say, a certain claim and voucher purporting that Lee Chong Company of Honolulu, City and County of Honolulu, Ter-

ritory of Hawaii, was then, there and thereby entitled to the sum of Five Hundred Twenty-six Dollars Sixty Cents ($526.60) for groceries, fruits and vegetables delivered to said Schofield Camp of the Civilian Conservation Corps during the month of August, 1934; that said claim and voucher was then and there, to-wit, at the time of making and presenting thereof [10] as aforesaid, false, fictitious and fraudulent in this: That the following items appearing on said claim and voucher, to-wit:.

25	lbs. California yams @$.10 per lb. (50 lbs. billed—25 lbs. only delivered)	$ 2.50
6	cases honey dew melons @$2.50 per case	15.00
300	lbs. pumpkin @$.045 per lb.	13.50
15	gallons mayonnaise @$1.50 per gallon	22.50
10	lbs. dried mushrooms @$1.90 per lb.	19.00
		$72.50

were not delivered to said Civilian Conservation Camp at all, and that said Lee Chong Company was not entitled to pay therefor, all of which the said

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew at the time of making, causing to be made, and presenting and causing to be presented, said claim and voucher, and that said claim and voucher was then and there false, fictitious and frau-

dulent, and so the Grand Jurors, on their oath, present that

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

at the City and County of Honolulu, Territory of Hawaii, within said District and within the jurisdiction of this Court, did, on or about the 7th day of September, 1934, make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher upon and against the Schofield [11] Camp of the Civilian Conservation Corps aforesaid, which said claim and voucher they, the said

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew to be false, fictitious and fraudulent; contrary to law and to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

/s/ INGRAM M. STAINBACK,
United States Attorney, District of Hawaii. [12]

[Title of Court and Cause.]

DEMURRER.

Filed Mar. 26, 1935 at 1 o'clock and 50 minutes P. M.

/s/ WM. F. THOMPSON, JR.,
Clerk.

Receipt of a copy of the within demurrer is hereby acknowledged this 26th day of March, 1935.

/s/ WILLSON C. MOORE,
Ass't U. S. Attorney.

E. R. McGHEE, Esq.,
Arcade Building,
Honolulu, T. H.,
Attorney for Defendant Robert K. Mookini.

[13]

Comes now ROBERT K. MOOKINI, one of the defendants above named, by E. R. McGHEE, his attorney, and demurs to the indictment heretofore found and presented herein against him on the following grounds, to-wit:

I.

That it affirmatively appears from the allegations contained in count I of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as de-

fendants, did "make and cause to be made" and "present and cause to be presented" for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior.

II.

That it is impossible to ascertain from the first count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious and fraudulent claim and voucher, no facts [14] being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

III.

That it is impossible to ascertain from the allegations of said first count of said indictment how or in what manner this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

IV.

That it does not appear from the allegations of said first count of said indictment that the camp director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment,

was authorized by law to make payment or to approve the making of payment of said claim and voucher.

V.

That it affirmatively appears from the allegations of said first count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

VI.

That there is a misjoinder of defendants in the first count of said indictment.

VII.

That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice [15] without pleading or showing facts justifying such joint charge or trial.

VIII.

That said first count of said indictment is indefinite and uncertain and impossible for this defendant to plead to, in that it fails to give any statement or facts showing how or in what manner this defendant participated in making and presenting the alleged claim and voucher therein mentioned.

IX.

That said first count of said indictment is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher.

X.

That said first count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as charges which could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

XI.

That said first count of said indictment, while charging that said goods "were not delivered to said Civilian Conservation Camp at all," fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

[16]

XII.

That it does not appear from said first count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

XIII.

That said first count of said indictment fails completely and wholly to show facts upon which this defendant can possibly know the exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof.

XIV.

That it affirmatively appears from the allegations contained in count II of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as defendants, did "make and cause to be made" and "present and cause to be presented" for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior.

XV.

That it is impossible to ascertain from the second count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious

and fraudulent claim and voucher, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

XVI.

That it is impossible to ascertain from the allegations of said second count of said indictment how or in what manner [17] this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

XVII.

That it does not appear from the allegations of said second count of said indictment that the camp director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment, was authorized by law to make payment or to approve the making of payment of said claim and voucher.

XVIII.

That it affirmatively appears from the allegations of said second count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

XIX.

That there is a misjoinder of defendants in the second count of said indictment.

XX.

That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice without pleading or showing facts justifying such joint charge or trial.

XXI.

That said second count of the said indictment is indefinite and uncertain and impossible for this defendant to plead to, in [18] that it fails to give any statement or facts showing how or in what manner this defendant participated in making and presenting the alleged claim and voucher therein mentioned.

XXII.

That said second count of said indictment is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher.

XXIII.

That said second count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or

could properly be made, or as charges which could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

XXIV.

That said second count of said indictment, while charging that said goods "were not delivered to said Civilian Conservation Camp at all," fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

XXV.

That it does not appear from said second count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

XXVI.

That said second count of said indictment fails completely and wholly to show facts upon which this defendant can pos- [19] sibly know the exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof.

WHEREFORE, this defendant asks the judgment of this court whether he be required to answer unto said indictment; asks that said indict-

ment be quashed and that he may be dismissed and discharged from the premises specified in said indictment.

Dated at Honolulu, Territory of Hawaii, this 26th day of March, 1935.

ROBERT K. MOOKINI,
By /s/ E. R. McGHEE,
His Attorney. [20]

[Title of Court and Cause.]

DEMURRER OF DEFENDANT,
LEE SAU CHONG

Filed Mar. 26, 1935 at 2 o'clock and 20 minutes p. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, T. H.
Attorney for Defendant,
Lee Sau Chong.

Receipt is hereby acknowledged of copy of the within demurrer this March 26, 1935.

(s) WILLSON C. MOORE,
Assistant U. S. Attorney. [21]

Comes now the defendant LEE SAU CHONG, by his attorney Barry S. Ulrich and demurs to the Indictment heretofore found herein by the grand jury of the United States on, to-wit: The 19th day of March, 1935; and as grounds for demurrer alleges as follows:

Defendant demurs to COUNT ONE of said Indictment on the ground:

I.

That it affirmatively appears from the allegations thereof that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim.

II.

That it is impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason [22] of which it is charged that he acted in a manner contrary to law.

III.

That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

IV.

That facts are not stated in this Count of said Indictment showing the actual doing of acts or

happening of facts showing the commission of a crime by this defendant.

V.

That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

VI.

That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count.

VII.

That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

VIII.

That there is a misjoinder of defendants. [23]

IX.

That it affirmatively appears from said indictment that there is an attempt to force persons to

trial jointly to their prejudice without the pleading or showing of facts justifying any such joint charge or trial.

X.

That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

XI.

That the said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill.

XII.

That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

XIII.

That said Count of said Indictment while charging that said goods were not delivered to the

Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place [24] for delivery.

XIV.

That it does not appear from the allegations of said Count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it affirmatively appearing that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery said Count failing to indicate that such proper delivery was not made.

XV.

That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

XVI.

That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code (Section 35, C. C.).

XVII.

That said count of said Indictment fails completely to state facts from which this defendant can possible know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

DEFENDANT DEMURS TO COUNT TWO of said Indictment on the ground:

I.

That it affirmatively appears from the allegations thereof that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim. [25]

II.

That it is impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

III.

That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

IV.

The facts are not stated in this Count of said Indictment showing the actual doing of acts or hap-

pening of facts showing the commission of a crime by this defendant.

V.

That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

VI.

That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count. [26]

VII.

That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

VIII.

That there is a misjoinder of defendants.

IX.

That it affirmatively apears from said indictment that there is an attempt to force persons to trial jointly to their prejudice without the pleading or

showing of facts justifying any such joint charge or trial.

X.

That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

XI.

That said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill.

XII.

That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not [27] be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

XIII.

That said Count of said Indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and

completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place for delivery.

XIV.

That it does not appear from the allegations of said Count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it appearing affirmatively that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery, said Count failing to indicate that such proper delivery was not made.

XV.

That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

XVI.

That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code (Section 35, C. C.). [28]

XVII.

That said Count of said Indictment fails completely to state facts from which this defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

DEFENDANT DEMURS TO SAID INDICTMENT on the further ground that in the two Counts thereof there are charged two totally separate and distinct crimes in no wise connected the one with the other.

DEFENDANT DEMURS on the further ground that there is a misjoinder of causes of action.

Dated at Honolulu, T. H., March 26, 1935.

LEE SAU CHONG,
Defendant.

By (s) BARRY S. ULRICH
His Attorney

I hereby certify that this Demurrer is not intended for delay.

(s) BARRY S. ULRICH [29]

[Title of Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Filed Apr. 8, 1935 at 10 o'clock and 45 minutes a. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

E. R. McGHEE,
Arcade Building,
Honolulu, T. H.
Attorney for Robert K. Mookini,
Defendant.

Receipt of Copy of Within Motion acknowledged, this April 8, 1935, at.....A. M.

(s) WILLSON C. MOORE,
Asst. U. S. Attorney [30]

Comes now ROBERT K. MOOKINI, one of the defendants above named, by E. R. McGHEE, his attorney, and moves the Court for an order requiring the plaintiff to furnish this defendant with a Bill of Particulars in this action for the reasons following, to-wit:

I.

That this defendant is ignorant of the particular charges made against him in the indictment heretofore returned against him herein, and can not plead thereto until he shall have rendered to him a Bill of Particulars of the specific acts by reason of which it is alleged that he made and caused to be made, presented and caused to be presented, false, fictitious and fraudulent claims and vouchers as in said indictment set forth.

WHEREFORE this defendant moves the court for an order directing the plaintiff to deliver to him or file in this court a statement setting forth the particular actions by reason of which it is charged that this defendant has violated Section 80 Title 18 U. S. C. A. by making and causing to be made, presenting and causing to be presented the alleged fraudulent claims and vouchers referred to in said indictment, and in the meantime that all proceedings in this action be stayed. [31]

This motion is based upon the affidavit of Robert K. Mookini hereto attached and made a part hereof.

Dated at Honolulu, T. H., this the 8th day of April, 1935.

ROBERT K. MOOKINI,
By (s) E. R. McGHEE
His Attorney. [32]

[Title of Court and Cause.]

AFFIDAVIT

ROBERT K. MOOKINI, being duly sworn according to law, upon his oath says: That he is one of the defendants above named; that four offenses are alleged against him in the indictment heretofore found herein, without stating the particular facts constituting any one of said offenses; that this defendant is ignorant of the particulars of said offenses alleged in said indictment, and can not safely plead to or defend himself against the charges contained in said indictment until he shall have rendered to him a Bill of Particulars showing the particular acts by reason of which it is charged that he made and caused to be made, presented and caused to be presented the false, fictitious and fraudulent claims and vouchers as in said indictment set forth.

Dated at Honolulu, T. H., this the 8th day of April, 1935.

(s) ROBERT K. MOOKINI

Subscribed and sworn to before me this the 8th day of April, 1935.

(s) TATSUYO HIRASHIMA

Notary Public, 1st Judicial Circuit, Territory of Hawaii. [33]

[Title of Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Filed Apr. 17, 1935 at 10 o'clock and 30 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.
By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, T. H.
Attorney for Defendant,
Lee Sau Chong

Receipt of a copy is hereby acknowledged this 17th April, 1935

(s) WILLSON C. MOORE,
Ass't U. S. Atty. [34]

Comes now LEE SAU CHONG, one of the defendants above-named and moves this Honorable Court that it do make and issue an order requiring the plaintiff above-named to furnish to said defendant further particulars and information to apprise him of the nature of the charge being made against him so that it may be possible to prepare for trial herein, and in this connection your movant shows to this court as follows:

That he is wholly unconscious of and without knowledge of any facts showing or from which any jury could reasonably find the commission by him of either of the two crimes charged in the indictment;

that he is an employee of that certain business known as Lee Chong Company; that neither he, nor so far as he knows, said company, nor any other employee thereof, has perpetrated or attempted to perpetrate any fraud on the United States Government as charged in said indictment; that to the best of his knowledge said company has never done more han deliver merchandise to the United States Government exactly as ordered by the representatives of said Government, has never attempted to collect more than the true worth of said merchandise so ordered and delivered, nor to do anything in the matter of presenting bills for allowance than to present them in the manner directed and requested by the representatives of the Government; that said Lee Chong [35] Company has never attempted to secure and never has secured payment for merchandise ordered and delivered one cent in excess of its true value, and in fact, that there is now still owing to said Lee Chong Company by the United States Government a sum of something in excess of $100.00.

Therefore, your movant is totally at a loss as to upon what facts the prosecution can be now claiming the commission by this defendant of the crimes charged in the indictment and said defendant cannot possibly prepare for trial unless he be apprised of at least some facts which the prosecution herein claims show the commission of a crime or offense by this defendant.

WHEREFORE, defendant moves that plaintiff be required to furnish the following particulars:

(1) A statement showing how and in what manner it is claimed that this defendant, Lee Sau Chong, participated in the joint making of a fraudulent claim against the Government.

(2) What said claim or claims was or were and where it was fraudulent.

(3) When said claim or claims was or were presented.

(4) To whom said alleged fraudulent claim or claims was or were presented.

(5) What part was taken by defendant Lee Sau Chong in the presentment of said alleged fraudulent claim or claims.

(6) Whether it is claimed said defendant Lee Sau Chong presented said alleged fraudulent claim or claims on his own behalf or as agent or representative for said Lee Chong Company.

(7) Whether it is claimed that said defendant Lee Sau Chong presented a bill to the Government with intent to deceive or defraud the Government and officials thereof in the procuring of moneys in excess of the true worth of merchandise actually delivered to the Government on order of its duly authorized representative. [36]

(8) Whether it is claimed that the Government was actually defrauded by defendant of any sum of money and if so, how much.

(9) Whether it is claimed that any attempt was ever made to defraud the Government of any sum of money by this defendant and if so, how much.

(10) What part it is claimed that this defendant had in the commission of said Joint crimes charged

in said indictment and what part was had by the other three defendants named in said indictment.

(11) Whether by the language of the two counts of said indictment it is meant that goods and merchandise were charged to the Government in a certain amount without the delivery of merchandise in that amount, or that mistakes or errors were made in the description of the merchandise delivered.

This motion is based upon the allegations of fact herein contained, in the records and files herein and upon such further showing as may be made upon the hearing hereof.

Dated at Honolulu, T. H., April 17, 1935.

LEE SAU CHONG,
Defendant

By (s) BARRY S. ULRICH
His Attorney. [37]

[Title of Court and Cause.]

MOTION FOR SEVERANCE.

Filed Apr. 17, 1935 at 2 o'clock and 55 minutes P. M. Wm. F. Thompson, Jr., Clerk. By (s) Thos. P. Cummins, Deputy Clerk.

BARRY S. ULRICH,
317 Dillingham Building,
Honolulu, T. H.
Attorney for Defendant,
Lee Sau Chong. [38]

Comes now LEE SAU CHONG, defendant above-named, and moves that this Court do make and enter its order directing that his cause as defendant in the above-entitled matter be severed for the purposes of trial from the causes of the other defendants herein, and that said cause do be set for trial as to him alone on a day certain.

Dated at Honolulu, T. H., April 13, 1935.

LEE SAU CHONG,
Defendant.

By /s/ BARRY S. ULRICH,
His Attorney. [39]

AFFIDAVIT IN SUPPORT OF MOTION FOR SEVERANCE.

Territory of Hawaii,
City and County of Honolulu.—ss.

LEE SAU CHONG, being first duly sworn, on oath deposes and says: That he is one of the defendants in the above-entitled matter, and your affiant says that he is an employee of that certain company known as Lee Chong Company; that he is not and never has been in the employ of the Government of the United States; that he knows of no fact indicating or showing the commission by him of either of the crimes charged in the indictment herein; that he is completely innocent of having ever in any way defrauded or attempted to defraud the United States Government; that so far as he is concerned and so far as

the company known as Lee Chong Company is concerned, there has never at any time been any act or activity other than a perfectly proper delivery of merchandise as ordered by the officials of the Government in the manner directed and to the place indicated by those officials and a bona fide charging for such delivery to the extent only of the true worth and value of merchandise delivered as per order; that there has never been an attempt to procure payment of more than has been justly due; that there has never been received more than which was in fact justly due, and that there is still a balance owing from the United States Government to the said Lee Chong Company; affiant says that as to the other defendants jointly indicted with him in the above-entitled matter he is informed and believes and therefore alleges that they are or at the time of the happening of the events referred to in the indictment herein were all Government officials in the employ of the United States Government; that one of them was the officer to whom bills had to be presented; that they were authorized to act on behalf of the United States Government and as to the actions and activities of said Government officials after the delivery to them as per their order of the merchandise hereinabove referred to, your affiant [40] knows absolutely nothing, and affiant says that if any offense has been committed, it could only have been committed after all participation by him said Defendant and Lee Chong Com-

pany had ceased, and that it would be highly prejudicial to require him to go to trial jointly with said other defendants in view of the fact that evidence would necessarily have to be made available as to them which would not be admissible as to your affiant if tried alone and yet which must inevitably prejudice the rights and interests of affiant in any joint trial which might be held.

Affiant asks that this court do permit and require that he be brought to trial herein alone and in a trial in which evidence as to himself alone will be admissible, and shows to this court that serious prejudice would be suffered were he to be forced to trial jointly with persons bearing a totally different relation to the subject matter of the charges herein involved and against whom as Government officials entirely other and different evidence would be admissible than would be admissible against your affiant or received in the event that he be tried alone.

Further than this affiant sayeth not, excepting that this affiant is made in support of the motion for severance filed herewith.

/s/ LEE SAU CHONG.

Subscribed and sworn to before me this 17th day of April, 1935.

[Seal] /s/ MADELINE L. HAYDEN,
Notary Public, First Judicial Circuit, Territory of Hawaii. [41]

[Title of Court and Cause.]

INSTRUCTIONS GIVEN BY COURT.

5/28/1935 /s/ S. C. HUBER,
Judge.

INGRAM M. STAINBACK,
United States Attorney,
District of Hawaii,
WILLSON C. MOORE,
Assistant United States Attorney, District of Hawaii,
Attorneys for Plaintiff. [42]

PLAINTIFF'S INSTRUCTION No. 1.

You are instructed that the Grand Jury in this case returned an indictment against four defendants, namely, Robert K. Mookini, Lee Sau Chong, William E. Miles and John E. Cunningham. The defendant John E. Cunningham has entered a plea of guilty and, therefore, is not on trial at this time; that the defendant William E. Miles has obtained a severance in this case which entitles him to a separate trial and, therefore, is not on trial at this time, and that the only two defendants now upon trial are the defendants Robert K. Mookini and Lee Sau Chong.

Given

/s/ S. C. HUBER,
Judge [43]

PLAINTIFF'S INSTRUCTION No. 2.

You are instructed that the indictment in this case is in two counts and charges a violation of Section 80 of Title 18 of the United States Code, the material parts of which are as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States . . . any claim upon or against the Government of the United States, or any department or officer thereof . . . knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof . . . shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, shall be . . ."

Then follows the punishment.

Given

(s) S. C. HUBER,
Judge. [44]

PLAINTIFF'S INSTRUCTION NO. 3.

The indictment in this case is in no sense evidence or proof that the defendants have committed the alleged crime, but is merely a formal allegation, required by law, alleging that the crime was committed in the form and manner therein set forth, and no juror should suffer himself to be influenced in any degree by the fact that this indictment has been returned against the defendants.

Given

(s) S. C. HUBER, [45]

PLAINTIFF'S INSTRUCTION NO. 4.

You are instructed that the Camp Director of the Civilian Conservation Corps is an officer in the civil service of the United States. You are further instructed that it appears from the evidence in this case that said Camp Director was charged with the duty of disbursing what is known as the mess fund, and there is further evidence that he also handled a canteen fund, the mess fund being a Government realization while the canteen fund belonged wholly to the members of the Civilian Conservation Corps, and said Canteen fund was not a fund belonging to the Government of the United States.

Given

(s) S. C. HUBER,
Judge. [46]

PLAINTIFF'S INSTRUCTION NO. 5.

You are instructed that the words "false, fictitious, fraudulent and knowing" have been defined by the Federal Courts as follows:

> The term "false" used, means "unfounded" or "unjust"; by "fictitious' is meant "not real"; by "fraudulent", "wrong" or "deceitful". These terms have no special legal signification in their use in this statute, but are to be taken by you in their ordinary and well-understood sense. The language of the statute and indictment is, "knowing such claim to be false, fictitious and fraudulent". By the word "knowing", as here used is meant the having a certain and clear perception of the falsity of the claim made."
>
> United States v. Bettiger, Federal Case No. 14599. [47]

PLAINTIFF'S INSTRUCTION NO. 6.

A criminal prosecution begins with the presumption that the defendants, although accused, are innocent, and to overcome this legal presumption the evidence must be clear and convincing, and sufficiently strong to convince the jury beyond a reasonable doubt that the defendants are guilty. The presumption of innocence is evidence created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced

to overcome the proof which the law has created. The benefit of this presumption attends the accused at every stage of the proceedings and stands as his sufficient protection unless and until it has been removed by evidence proving his guilt beyond a reasonable doubt.

Given

(s) S. C. HUBER,
Judge. [48]

PLAINTIFF'S INSTRUCTION NO. 7.

In this case the burden of proof is upon the United States and, to entitle it to a conviction of the defendants, or either of them, the United States must prove every material element of the offense, to the satisfaction of each member of the jury, and beyond a reasonable doubt. If any one of you entertain a reasonable doubt of the defendants' guilt as to any material element of the offense, it is your sworn duty to vote for an acquittal as to such offense, otherwise to vote for conviction.

Given

(s) S. C. HUBER,
Judge. [49]

PLAINTIFF'S INSTRUCTION NO. 8.

If you can reconcile the evidence with any reasonable hypotheses consistent with the defendants' innocence, or either of them, it is your duty to do so and in that case to find them not guilty, for every

reasonable doubt is to be resolved in favor of each defendant, and it is not sufficient that the circumstances coincide with, account for, and therefore render probable the guilt of the defendants, or either of them. They must exclude to a moral certainty every other reasonable hypothesis.

Given

(s) S. C. HUBER,
Judge. [50]

PLAINTIFF'S INSTRUCTION NO. 9.

You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime, and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts.

Given

(s) S. C. HUBER,
Judge. [51]

PLAINTIFF'S INSTRUCTION NO. 10.

A reasonable doubt is not a fanciful doubt, but such a doubt raised by the evidence as a reasonable man can give a reason for. The law does not require that the government shall prove an accused

guilty beyond all possible doubt, but the law does require the government shall prove each and every one of the material allegations of the indictment to your satisfaction and beyond all doubt that is reasonable, in other words, it must satisfy you as reasonable men of the guilt of the accused and satisfy you beyond a reasonable doubt.

You are the exclusive judges of the credibility of the witnesses and of the weight to be attached to their testimony, but the law you must take from the Court whether or not you, in your own minds, believe the Court to be correct. To pass upon the law is the exclusive province of the Court, but to pass upon the facts and apply to such facts the law as given by the Court is the exclusive province of the jury, and in this connection I instruct you that, although the Judge legally may comment upon the facts and give his opinion, nevertheless that is the opinion of the Judge only and the final responsibility of deciding the facts rests with you.

In determining the credibility of a witness you may take into consideration his interest, bias, prejudice, motives or feelings of revenge, if any, his manner of testifying, his demeanor on the witness stand and the probability or improbability of the story told by him, or any other thing which a reasonable man would consider in determining whether or not he believed a witness. If you believe that any witness has wilfully testified falsely or wilfully misled you as to any material fact in the case, you may

disregard his entire testimony except such part as may be corroborated by other credible evidence, or believed by you to be true.

Given

(s) S. C. HUBER,
Judge. [52]

INSTRUCTION NO. 11.

You are instructed that in this case two of the defendants now on trial have testified in their own behalf. This is a right conferred upon them by law. The fact that they are defendants may be considered by you as bearing upon their interest in the result of the case. In connection with determining the weight and credibility to be given to their testimony but apart from such consideration, the testimony of such defendants is to be treated the same as testimony of other witnesses.

Given

(s) S. C. HUBER,
Judge. [53]

PLAINTIFF'S INSTRUCTION NO. 12.

Finally, Gentlemen of the Jury, if after deliberately considering all the facts and circumstances in this case and carefully weighing the evidence and considering in connection therewith the various presumptions and rules of evidence as outlined in these instructions, you find from the evidence and to your satisfaction beyond all reasonable doubt

the allegations in the indictment have been established, it is your duty to return a verdict of guilty, otherwise it is equally your duty to return a verdict of not guilty.

(s) S. C. HUBER,
Judge. [54]

PLAINTIFF'S INSTRUCTION NO. 13.

You are instructed that with the question of punishment you have nothing to do, as the law has left that to be determined by the court, in case of a conviction.

Given

(s) S. C. HUBER,
Judge. [55]

PLAINTIFF'S INSTRUCTION NO. 14.

Gentlemen of the Jury, you are instructed that if you find and believe from the evidence beyond a reasonable doubt that the defendants named in this indictment, or any of them, agreed between themselves or conspired together to make, cause to be made, present or cause to be presented for approval or payment the vouchers covered by Counts I or II of the indictment, and that in pursuance thereof said vouchers, or either of them, were so made, presented or caused to be presented with intent to defraud the United States Government or any department thereof, then I charge you that any act or declaration of such agreeing defendant or defendants in furtherance of said common purpose

done or said by him or them in the absence of any other defendant is legal evidence in this case against each of the said agreeing defendants and may be considered by you in finding your verdict.

Given

(s) S. C. HUBER,
Judge.

Dixon v. State, 42 S. E. 356;
Bradley v. State, 57 S. E. 237;
Randall's Instructions to Juries, Vol. 1, Page 257, Sec. 135. [56]

DEFENDANTS' INSTRUCTION NO. 1.

I instruct you that the issue that you are to try in this case is that presented by the indictment and the defendants' plea of "Not Guilty." For be it remembered, that the plea of "Not Guilty" puts in issue and requires the prosecution to prove each and every material allegation in the charge beyond all reasonable doubt. The indictment in this case is a mere accusation and is not of itself any evidence, not the slightest, of the defendants' guilt, and no juror should permit himself to be to any extent influenced because or on account of the indictment against the defendants. You are further instructed that the defendants are presumed by the law to be innocent of the crime charged against them, in each and all its parts, and this presumption surrounds, shields and protects them throughout each and every *state* of this trial until overcome by satisfactory evidence, which convinces you of their guilt

as charged beyond every reasonable doubt. Moreover, this presumption of innocence is not a mere form to be disregarded by you at pleasure, but it is an essential, substantial part of the law of the land, and is binding upon you in this case, and it is your duty to give the defendants the full benefit of this presumption and to acquit them, unless, as I have already stated, the evidence satisfies you of their guilt beyond every reasonable doubt.

Given

(s) S. C. HUBER,
Judge. [57]

DEFENDANTS' INSTRUCTION NO. 3.

Under the law no jury should convict a person charged with crime upon mere suspicion, however strong, or simply because there is a preponderance of all of the evidence in the case against him, or simply because there are strong reasons to suspect him guilty. What the law requires, before a person can be convicted of crime, is not suspicion, not mere probabilities, but proof which excludes every reasonable doubt of his innocence.

Given

(s) S. C. HUBER,
Judge. [58]

DEFENDANTS' INSTRUCTION NO. 5.

In order to secure a conviction in this case, the Government may rely upon circumstantial evidence. The theory of the prosecution is that from the

circumstances which it contends have been proven in this case, you are warranted in finding the defendants or either of them guilty as charged, beyond a reasonable doubt. But I instruct you, as a matter of law, that where a conviction is sought upon circumstantial evidence, the prosecution must not only show the alleged circumstances to be true, but further, that such circumstances are incompatible upon any reasonable hypothesis, with the innocence of the defendants, and incapable of explanation upon any other reasonable theory than that of their guilt. In all criminal cases where it is sought to convict a person upon circumstantial evidence, it is not enough that all the circumstances proven are consistent with and point to the defendants' guilt, but to authorize a conviction upon this species of evidence, the circumstances proven must not only be in harmony with the guilt of the accused, but they must be of such a character that they cannot reasonably be true, and the defendants be innocent. Thus you cannot convict these defendants upon evidence merely showing a possible opportunity for the commission of the alleged crime, if there be any such evidence before you, nor can you convict these defendants nor either of them upon surmises, speculations and conjectures, nor can you convict these defendants upon suspicion, no matter how strong.

Given

(s) S. C. HUBER,
Judge. [59]

DEFENDANTS' INSTRUCTION NO. 6.

The defendants in this case cannot be guilty of the crime charged against them in the indictment herein and cannot be convicted thereof by you unless the prosecution has established to your satisfaction from the evidence beyond every reasonable doubt, that the defendants not only did the acts charged to have been done by them in the indictment herein, but also that the defendants had formed a criminal intent when they so acted to defraud or cheat the Government of the United States or a department thereof. And if you have any reasonable doubt arising from the evidence as to whether or not defendants or either of them had formed such criminal intent, you must give each defendant the benefit of such doubt and find them not guilty.

Given

(s) S. C. HUBER,
Judge. [60]

DEFENDANTS' INSTRUCTION NO. 7.

A reasonable doubt is that state of the mind which, after a full comparison and consideration of all the evidence, both for the Government and the defense, leaves the minds of the Jury in that condition that they cannot say that they feel an abiding faith amounting to a moral certainty from the evidence in this case, that the defendants are guilty of the crime as alleged in the indictment. If you have such a doubt, if your conviction of the

defendants' guilt, as alleged in the indictment, does not amount to a moral certainty from the evidence in this case, then you must give the defendants the benefit of that doubt and find them not guilty.

Given

(s) S. C. HUBER,
Judge. [61]

DEFENDANTS' INSTRUCTION NO. 8.

You have no right to disregard the testimony of the defendants on the ground alone that they are the defendants and stand charged with the commission of a crime. The law presumes the defendants to be innocent until they are proved guilty beyond all reasonable doubt, and the law allows them to testify on their own behalf, and you should fairly and impartially consider and weight their testimony, together with all of the other evidence in this case.

Given

(s) S. C. HUBER,
Judge. [62]

DEFENDANTS' INSTRUCTION NO. 10.

I further instruct you that the term "false" as used in the statute under which these defendants are being prosecuted means unfounded or unjust; that by "fictitious" is meant not real; by "fraudulent" is meant wrong or deceitful, and that the word "knowingly" as used in the phrase "knowing

such claim to be false, fictitious and fraudulent", is meant the having of a certain and clear perception of the falsity of the claim made.

U. S. vs. Bittinger, 24 Federal Cases No. 14,599.

Given

(s) S. C. HUBER,
Judge. [63]

DEFENDANTS' INSTRUCTION NO. 12.

I further instruct you that before you can find the defendants or either of them guilty as charged in the indictment herein, you must find from the evidence, and believe beyond any reasonable doubt that United States Government Exhibits Nos. D and G were made, caused to be made, presented or caused to be presented by the defendants or either of them, to an officer in the service of the United States or a department thereof for approval or payment out of United States Government Mess Funds.

Given

(s) S. C. HUBER,
Judge. [64]

DEFENDANTS' INSTRUCTION NO. 15.

I instruct you, Gentlemen of the Jury, that the crime charged in this case is that of knowingly making, causing to be made, presenting, or causing to be presented for payment or approval a false claim against the Government of the United States,

or a department or officer thereof, and that you cannot convict either of the defendants in this case unless you find from the evidence and beyond all reasonable doubt that such defendant did knowingly and intentionally have a part in making or presenting such false claim with the intent and design that it be paid by the United States Government and out of Government money, for it is of the essence of the crime that there must be an intent to defraud the United States Government.

Given

(s) S. C. HUBER,
Judge. [65]

DEFENDANTS' INSTRUCTION NO. 16.

I instruct you, Gentlemen of the Jury, that if you believe from the evidence that the defendant Lee Chong as manager of Lee Chong Company permitted or directed that certain items on the bills of May 12th and September 1st, which were not edibles, be listed as vegetables, without any knowledge as to whether it was intended by said Camp Director to pay such bill or bills out of one fund or another or out of Government funds or non-Government funds, and that he did not intend to defraud the United States Government, then you will find the defendant Lee Chong not guilty.

Given

(s) S. C. HUBER,
Judge. [66]

DEFENDANTS' INSTRUCTION NO. 17.

I instruct you, Gentlemen of the Jury, that before you can find the defendants or either of them guilty as charged in the indictment you must believe from the evidence and beyond all reasonable doubt that the defendants did knowingly participate in the making, causing to be made, presenting or causing to be presented for approval or payment to the Camp Director of the Civilian Conservation Corps either of the vouchers of May 12th or September 1st, 1934, for the purpose of defrauding the United States Government.

Given

(s) S. C. HUBER,
Judge. [67]

DEFENDANTS' INSTRUCTION NO. 18.

I instruct you, Gentlemen of the Jury, that a claim presented to an officer for payment could not be considered by you to be a false or fictitious claim within the meaning of the statute under which these defendants are being tried unless it was presented by the defendant with the intention of defrauding the United States Government.

Given

(s) S. C. HUBER [68]

DEFENDANTS' INSTRUCTION NO. 19.

I instruct you, Gentlemen of the Jury, that the only offenses charged in the indictment in this case

or which you may consider in determining the guilt or innocence of the defendants, or either of them, have to do with the so-called Mother's Day order billed as of May 12th, and the so-called Labor Day order billed as of September 1st.

Given

(s) S. C. HUBER [69]

PROCEEDINGS, INDICTMENT FILED, BONDS FIXED.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, March 19, 1935.

[Title of Court and Cause.]

The grand jurors aforesaid appeared in a body and, through their foreman, presented an indictment charging the defendants above named with the violation of section 80, Title 18, United States Code (Section 35, C.C.). The Court ordered that said indictment be filed. Upon motion of Mr. Willson C. Moore, Assistant United States Attorney, the Court ordered that a bench warrant issue for the defendants herein, bond of the defendants Lee Sau Chong and Robert K. Mookini being fixed at $1,000.00 and bond of the defendant William E. Miles being fixed at $500.00. [70]

CONTINUANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, March 21, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant William E. Miles with Mr. Fred Patterson, his counsel, the defendants Robert K. Mookini and Lee Sau Chong with Mr. Earl R. McGhee, their counsel. This case was called for arraignment. The Court ordered that this case be continued to Monday, March 25, 1935 at 2 p.m. for arraignment. [71]

PROCEEDINGS AT ARRAIGNMENT AND PLEA OF DEFENDANT CUNNINGHAM.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, March 22, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Miss Jean Vaughan, and also came the defendant John E. Cunningham, without counsel. This case was called for arraignment. The defendant waived the reading of the indictment, consenting that the charge be entered in the words thereof, and entered a plea of guilty as

charged. The Court ordered that sentence of said defendant be deferred. [72]

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, March 25, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Lee Sau Chong with Mr. Earl R. McGhee, their counsel, and the defendant Miles with Mr. Fred Patterson, his counsel. Mr. McGhee, gave notice of his intention to file demurrers on behalf of the defendants Mookini and Lee Sau Chong. The Court ordered that said demurrers be filed by March 26, 1935 at 2 p.m. The defendant Miles waived the reading of the indictment, consenting that the charge be entered in the words thereof. The Court ordered that plea of the defendant Miles be continued to April 1, 1935. [73]

DEMURRER FILED, CONTINUANCE FOR HEARING.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, April 1, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came the defendant William E. Miles with Mr. Fred Patterson, his counsel. The demurrer of the defendant William E. Miles was filed in open court. The Court ordered that argument on said demurrer be deferred to Wednesday, April 3, 1935 at 9:30 a.m. [74]

HEARING ON DEMURRERS.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, April 3, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Chong with Mr. E. R. McGhee, their counsel, and Mr. Fred Patterson with the defendant Miles. This case was called for argument on demurrers filed herein. Argument was had by Mr. McGhee on behalf of the defendants Mookini and Chong. Argument was had by Mr. Moore. Argument was had by Mr. Patterson. The case was submitted to the Court. The demurrers were overruled. Counsel for the defendants noted exceptions. The Court ordered that this case be continued to Monday, April 8, 1935 at 2 p.m. for plea. [75]

HEARING ON MOTION FOR BILL OF PARTICULARS.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, April 8, 1935.

[Title of Court and Cause.]

On this day came the defendant Robert K. Mookini with Mr. E. R. McGhee, his counsel, the defendant Lee Sau Chong without counsel and the defendant William E. Miles with Mr. Fred Patterson, his counsel. This case was called for hearing on a motion for a bill of particulars as to the the defendant Mookini. Argument was had by Mr. McGhee and Mr. Moore. The motion was submitted to the Court. The Court denied the motion for a bill of particulars. The defendant Mookini entered a plea of not guilty as charged. The defendant Lee Sau Chong entered a plea of not guilty as charged. The defendant Miles entered a plea of not guilty as charged. The Court ordered that this case be continued to Saturday, April 13, 1935 for setting.

[76]

CONTINUANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, April 13, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came Mr. Earl R. McGhee, counsel for the defendant Mookini, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for setting. Mr. Ulrich asked leave to be allowed to file a motion for a bill of particulars and a motion for severance and a motion for return of evidence on behalf of the defendant Lee Sau Chong. The Court allowed Mr. Ulrich to Monday, April 15, 1935 at 2 p.m. to file said motions. The Court ordered that the case be continued as to the other defendants. [77]

HEARING ON MOTION FOR BILL OF PARTICULARS AND MOTION FOR SEVERANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, April 17, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini by Mr. Earl R. McGhee, his counsel and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for hearing on a motion for bill of particulars as to the defendant Lee Sau Chong. Mr. Moore stated that he was willing to submit the motion without argument. Mr. Ulrich argued on

said motion. Mr. Moore argued. The motion for bill of particulars was denied, an exception noted and allowed. A motion for severance as to the defendant Lee Sau Chong was read into the record. Argument was had by respective counsel. The Court ordered that this case be continued to Saturday, April 19, 1935 for further hearing and for hearing on a motion for severance as to the defendant William E. Miles. [78]

HEARING ON MOTION FOR SEVERANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, April 20, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini by Mr. Earl R. McGhee, his counsel, the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel, and the defendant Miles by Mr. Fred Patterson, his counsel. This case was called for hearing on motions for severance as to the defendants Lee Sau Chong and William E. Miles. Mr. Ulrich made a statement. Mr. Moore stated his objection as to severance of the defendant Lee Sau Chong. Mr. Patterson made a statement as to his motion for severance as to Wm. E. Miles. The Court took this matter under advisement. [79]

DECISION ON MOTIONS FOR SEVERANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, April 22, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini by Mr. Earl R. McGhee, his counsel, the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel and the defendant William E. Miles by Mr. Fred Patterson, his counsel. This case was called for decision on motions for severance. The motion for severance as to the defendant Miles was granted. The Court ordered that the defendant Miles be tried separate and apart from the other defendants in this case. The motion for severance as to the defendant Lee Sau Chong was denied. The Court ordered that this case be continued to April 26, 1935 for setting. [80]

PROCEEDINGS, CASE SET FOR TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, April 26, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came the defendant Lee Sau Chong by Mr. Barry S. Ulrich, his counsel, and the defendant Robert K. Mookini by Mr. Earl R. McGhee, his counsel. This case was called for hearing on a motion to set for trial. The Court set this case for trial on Monday, May 13, 1935 at 9 a.m. [81]

PROCEEDINGS AT TRIAL,

Continuance for Further Trial.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, May 13, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. Earl R. McGhee, his counsel and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. Mr. Ulrich also appeared as associate counsel for the defendant Mookini. This case was called for trial as to the defendants Mookini and Lee Sau Chong. The following jurors were duly empaneled and sworn to try the issues herein: Gordon S. May; Wm. W. Jefferson; Kenneth C. Morley; Robert J. Moore; Hubert P. Alderman; Walter H. Neff; Samuel K. Toomey, Jr.; James A. Malloy; Charles B. Lemon, Jr.; Louis A. Soares; Alfred T. Burlem; Robert M. Berthe. Mr. Moore read the indictment

and made the opening statement to the jury. James W. Lloyd was called and sworn and testified on behalf of the United States. The jurors were admonished about discussing the facts in this case and were excused to Tuesday, May 14, 1935 at 9 a.m. [82]

PROCEEDINGS AT FURTHER TRIAL,

Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, May 14, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Lee Sau Chong, with Mr. Earl R. McGhee and Mr. Barry S. Ulrich, their counsel. This case was called for further trial. The jury heretofore empaneled and sworn to try the issues herein was present. Wm. E. Miles was called and sworn and testified on behalf of the United States. U. S. Exhibit #1, original copy of itemized statement of Lee Chong Co., to C.C.C. Camp, Schofield, dated May 12, 1934 for $231.00, covering vegetables, etc., furnished, was marked for identification. U. S. Exhibit #2, carbon copy of the foregoing statement was marked for identification. U. S. Exhibit #3, copy, itemized statement dated May 12, 1934, Lee Chong Co. to

C.C.C. Camp, Schofield, for provisions supplied, total $231, was marked for identification. U. S. Exhibit #4, copy, itemized statements dated May 12, 1934, Lee Chong Co. to C.C.C. Camp, Schofield, for provisions supplied, total $231.00 was marked for identification. U. S. Exhibit #5, copy of May, 1934, statement of Lee Chong Co. to C.C.C. Camp, totaling $901.65, for provisions furnished, was marked for identification. U. S. Exhibit "A", check book containing cancelled checks of C.C.C. Camp Director, from Apr. 9, 1934 to October 10, 1934, was admitted in evidence, marked and ordered filed. U. S. Exhibit "B", heretofore marked for identification as U. S. Exhibit #1; U. S. Exhibit [83] "C", heretofore marked for identification as U. S. Exhibit #2; U. S. Exhibit "D", heretofore marked for identification as U. S. Exhibit #3, U. S. Exhibit "E", heretofore marked for identification as U. S. Exhibit #4, U. S. Exhibit "F", heretofore marked for identification as U. S. Exhibit #5, were admitted in evidence, marked and ordered filed. U. S. Exhibit "G", copy of itemized statement, dated Sept. 1, 1935, Lee Chong Co. to C.C.C. Camp, total sum of $526.00 for provisions furnished, was admitted in evidence, marked and ordered filed. U. S. Exhibit "H", copy of itemized statement dated Sept. 1, 1934, total $454.10, Lee Chong Co. to C.C.C. Camp, Schofield, of provisions supplied, was admitted in evidence, marked and ordered filed. U. S. Exhibit "I", copy of

monthly statement for month of September, total $857.78, Lee Chong Co. to C. C. C. Camp, Schofield, was admitted in evidence, marked and ordered filed. U. S. Exhibit "J", copy of itemized statement, dated Sept. 1, 1934, total $72.50, Lee Chong Co. to C.C.C. Camp, Schofield, for various supplies, was admitted in evidence, marked and ordered filed. U. S. Exhibit "K", copy of receipt of Lee Chong Co. from C.C.C. Camp Director, Schofield, dated Oct. 12, 1934 for sum of $820.13, was admitted in evidence, marked and ordered filed. The jury was excused and the government made an offier of proof. The offer of proof was denied. The Court ordered that this case be continued to Wednesday, May 15, 1935 at 9 a.m. [84]

PROCEEDINGS AT TRIAL,
Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, May 15, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, his counsel and Mr. Barry S. Ulrich, associate counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. The jury heretofore

empaneled and sworn to try the issues herein was present, said fact being stipulated by counsel. Wm. E. Miles resumed the witness stand on cross-examination. John E. Cuuningham was called and sworn and testified on behalf of the United States. The time for adjournment having arrived the Court ordered that this case be continued to Thursday, May 16, 1935 at 9 a.m. [85]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, May 16, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Robert K. Mookini, with Mr. Earl R. McGhee, his counsel and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury, heretofore empaneled and sworn to try the issues herein was present. John E. Cunningham resumed the witness stand on cross-examination. Herbert Lloyd was called and sworn and testified on behalf of the United States. James R. Mahaffy was called and sworn and testified on behalf of the United States. U. S. Exhibit

#6, council book, was marked for identification. Exhibit "L", heretofore marked for identification as U. S. Exhibit #6, was admitted in evidence, marked and ordered filed. Frank D. Gibson was called and sworn and testified on behalf of the United States. Harry M. Coleman was called and sworn and testified on behalf of the United States. Herbert Baldwin, Finance Officer, U. S. Army, was called and sworn and testified on behalf of the United States. The time for adjournment having arrived the Court ordered that this case be continued to Friday, May 17, 1935 at 9 a.m. [86]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, May 17, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Joseph I. De Ville, agent, secret service,

Treasury Department, was called and sworn and testified on behalf of the United States. The United States rested. A motion by Mr. Ulrich for a directed verdict of not guilty as to both defendants was made. The Court excused the jury to Monday, May 20, 1935 at 9 a.m. Argument was had by Mr. McGhee on the motion for directed verdict. Argument was had by Mr. Ulrich. Argument was had by Mr. Moore. The motion for directed verdict was denied. An exception was noted and allowed. [87]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, May 20, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Lee Sau Chong, a defendant herein, was called and sworn and testified on behalf of the defense. Defendants' Exhibit #1, copy of state-

ment, Lee Chong Co. to C.C.C. Camp, in the sum of $72.50, for provisions supplied, was admitted in evidence, marked and ordered filed. Defendants' Exhibit #2, copy of receipt dated Oct. 12, 1934 for $820.13, Lee Chong Co. from C.C.C. Camp Director, was admitted in evidence, marked and ordered filed. Defendants' Exhibit "A", account sheet showing Mr. Mookini's account with Lee Chong Company, for the months of September and October, 1934, was marked for identification. Defendants' Exhibit #3, cash book of Chun Yau Chee in Chinese characters, was admitted in evidence, marked and ordered filed. The Court ordered that this case be continued to Tuesday, May 21, 1935 at 9 a.m. [88]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, May 21, 1935.

[Title of Court and Cause.]

On this day came the United States by Mr. Willson C. Moore, Assistant United States Attorney, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel, and this case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the

issues herein was present. Lee Sau Chong resumed the witness stand on cross examination. Monty Rogue, clerk, Lee Chong Co., was called and sworn and testified on behalf of the defense. Defendants' Exhibit "A", heretofore marked for identification was admitted in evidence, marked Defendants' Exhibit #4 and ordered filed. The time for adjournment having arrived the Court ordered that this case be continued to May 22, 1935 at 9 a.m. for further trial. [89]

PROCEEDINGS AT TRIAL,
Continuance for Further Trial.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, May 22, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. Earl R. McGhee and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Daniel P. MacGregor, Sr., clerk, Disbursing Office, U. S. Navy Yard, was called and sworn and testified on behalf of the defense. Robert K.

okini was called and sworn and testified on behalf the defense. At 11:45 a.m. the Court ordered t this case be continued to Thursday, May 23, 5 at 9 a.m. [90]

PROCEEDINGS AT FURTHER TRIAL,
Continuance.

om the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, May 23, 1935.

itle of Court and Cause.]

On this day came the United States by its Assist- t District Attorney, Mr. Willson C. Moore, and so came the defendant Mookini with Mr. Earl R. cGhee, and Mr. Barry S. Ulrich, his counsel, and e defendant Lee Sau Chong with Mr. Barry S. lrich, his counsel, and this case was called for rther trial. It was stipulated that the jury here- fore empaneled and sworn to try the issues herein as present. Robert K. Mookini resumed the wit- ss stand on cross examination. U. S. Exhibit M", copy of bill, Pacific Brewing Co., to Yamani, ted 9/1/34, for $16.15, was admitted in evidence, arked and ordered filed. Defendants' Exhibit #5, py of letter dated January 17, 1935, administra- ve assistant Department of Interior, to Earl R. cGhee, was admitted in evidence, marked and dered filed. Joseph P. Glowenle, salesman, Hurd ohlmann & Co., was called and sworn and testified

on behalf of the defense. Louis Hutchinson, former truck driver, Lee Chong Company, was called and sworn and testified on behalf of the defense. The Court ordered that this case be continued to May 24, 1935 at 9 a.m. [91]

PROCEEDINGS AT FURTHER TRIAL,
Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, May 24, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel, and this case was called for further trial. It was stiplated that the jury heretofore empaneled and sworn to try the issues herein was present. Marie Mookini was called and sworn and testified on behalf of the defense. Robert K. Mookini was recalled by Mr. Ulrich. U. S. Exhibit "N", copy of letter dated Jan. 9, 1935, office of Secretary of Interior to Robert K. Mookini, terminating Mr. Mookini's appointment as recreation officer, C.C.C. Camp, was admitted in evidence, marked and ordered filed. The defense rested.

Nellie Shelton, stenographer, was called and sworn and testified on behalf of the United States. U. S. Exhibit #7, copy of testimony of Robert K. Mookini, taken before Federal Grand Jury, on March 19, 1935, was marked for identification. U. S. Exhibit "O", heretofore marked for identification as U. S. Exhibit #7, was admitted in evidence, marked and ordered filed. Captain Baldwin was recalled by the prosecution. Harry M. Coleman was recalled by the prosecution. Harry F. Kim was called and sworn and testified on behalf of the United States. Frank D. Gibson was recalled by the government. Joseph I. De Ville was recalled by the government. The Court ordered that this case be continued to Monday, May 27, 1935 at 8:30 a.m. for further trial. [92]

PROCEEDINGS AT FURTHER TRIAL.
Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, May 27, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further

trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Wm. E. Miles was recalled by the government. John E. Cunningham was recalled by the government. James R. Mahaffey was recalled by the government. James Enright, M. D., was called and sworn and testified on behalf of the United States. The United States then rested. Monty Roque was recalled by the defense. Defendants' Exhibit #6, book, was admitted in evidence, marked and ordered filed. Lee Sau Chong was recalled by the defense. Both sides then rested. The Court ordered that this case be continued to May 28, 1935 at 8:30 a.m. for further trial. [93]

PROCEEDINGS AT FURTHER TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, May 28, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Mr. Moore argued to the jury on behalf of the prosecution. At 10:35 a.m. Mr. Ulrich argued

on behalf of the defense. At 12:02 p.m. Mr. Moore argued on rebuttal. At 12:35 p.m. bailiffs were sworn to take charge of the jury and to take the jury to lunch. At 1:42 p.m. the Court instructed the jury. At 2:20 p.m. the jury retired to deliberate upon a verdict. At 6 p.m. the jury was taken to dinner. At 10:16 p.m. the jury returned the following verdict:

> "We, the Jury, duly empaneled and sworn in the above-entitled cause, do hereby find as follows: Robert K. Mookini, of Count One Guilty, of Count Two Not Guilty; Lee Sau Chong of Count One Guilty, of Count Two Guilty of the Indictment heretofore filed herein. Dated Honolulu, T. H., May 28, 1935.
>
> (s) William W. Jefferson, Foreman."

Counsel for the defense entered an exception to the verdict and gave notice of motion for new trial. The verdict was ordered filed. [94]

CONTINUANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, June 10, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District, Attorney, Mr. Willson C. Moore, and also came the defendants by Mr. Barry S. Ulrich, their counsel. This case was continued to June 13,

1935 at 2 p.m. for hearing on a motion for new trial. [95]

PROCEEDINGS AT HEARING ON MOTION FOR NEW TRIAL,
~ Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, June 14, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Lee Sau Chong with Mr. Barry S. Ulrich, their counsel. This case was called for hearing on a motion for new trial. Argument was had by respective counsel. The Court ordered that this case be continued to June 18, 1935 at 10 a.m. for further hearing. [96]

PROCEEDINGS AT FURTHER HEARING ON MOTION FOR NEW TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, June 19, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came the defendants with Mr. Barry S. Ulrich and Mr. Earl R. McGhee, their counsel. This case was called for hearing on a motion for new trial. Mr. McGhee filed affidavits. The motion for new trial was overruled and an exception noted as to each defendant. The Court ordered that the matter of sentence be continued to Saturday, June 22, 1935 at 9 a.m. [97]

PROCEEDINGS AT SENTENCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, June 29, 1935.

[Title of Court and Cause.]

On this day came the United States by its District Attorney, Mr. I. M. Stainback, and also came the defendants Lee Sau Chong and Robert K. Mookini with Mr. E. R. McGhee and Mr. Barry S. Ulrich, their counsel. This case was called for sentence of said defendants. Counsel for the defendants made a plea for clemency on behalf of said defendants. Mr. Stainback made a recommendation as to the sentences of said defendants. The Court ordered that the defendant Mookini pay a fine of $1,500.00 and that he be imprisoned in Oahu Prison for three years. The Court ordered that as to the first count the defendant Lee Sau Chong pay a fine of $1,500 and that he be imprisoned in Oahu Prison for three years; that as to the second count the defendant Lee Sau Chong pay a fine of $1,000.00 and that he be im-

prisoned in Oahu Prison for two years, said sentences to run consecutively. Costs were remitted. An exception to the sentences was noted and allowed. Counsel for the defendants gave notice of appeal. The Court ordered that bond of the defendant Mookini be fixed at $2500.00, a combined appearance and supersedeas bond. The Court ordered that appearance and supersedeas bond of the defendant Lee Sau Chong be fixed at $5,000.00. The defendants were allowed to Wednesday, July 3, 1935 at 12 noon to file bond. Mittimus was stayed to July 3, 1935. [98]

[Title of Court and Cause.]

VERDICT.

Filed May 28th 1935 at 10 o'clock and 16 minutes p.m. (s) Wm. F. Thompson, Jr., Clerk. [122]

We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find as follows:

ROBERT K. MOOKINI,

Of Count One Guilty

Of County Two Not Guilty

LEE SAU CHONG

Of Count One Guilty

Of Count Two Guilty

Of the Indictment heretofore filed herein.

Dated: Honolulu, T. H., May 28th, 1935.

(s) WILLIAM W. JEFFERSON

Foreman. [123]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL AND AFFIDAVIT OF BARRY S. ULRICH.

Filed Jun. 7, 1935 at 12 o'clock and 5 minutes p.m. Wm. F. Thompson, Jr., Clerk, by (s) E. Langwith, Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, Hawaii
Attorney for Lee SAU CHONG,
Defendant above-named. [124]

MOTION FOR NEW TRIAL.

Comes now LEE SAU CHONG, defendant above-named, and shows unto this Honorable Court that after trial duly had in the above-entitled matter, and on, to-wit: the 28th day of May, 1935, the jury in the above-entitled cause did return and enter its verdict against him, said defendant, of guilty on the first and second counts of the indictment herein, and said defendant now moves this Honorable Court that it do make and enter its order vacating and setting aside the said verdict of guilty and granting to this defendant a new trial in said cause, and as grounds for this, his said motion, said defendant shows unto this Honorable Court as follows:

I.

That defendant has suffered serious prejudice herein in the overruling and denial of his motion heretofore made herein for a severance and a trial

separate from the other defendants in said cause and in being forced and compelled against his will and wish to stand trial herein together with one of the other defendants in said cause, to-wit: Robert K. Mookini. [125]

II.

That defendant has suffered serious prejudice herein in the action of this Court in overruling defendant's demurrer to the indictment, wherein, among other things, it was claimed that it was impossible for said defendant to ascertain from said indictment in what manner it was claimed that he, together with three other defendants, had jointly participated in the making and presentment of fraudulent claims for payment, wherefore it was impossible for said defendant to prepare properly for trial.

III.

That this defendant suffered prejudice in that he was forced to trial without opportunity being given to acquire information vital to the preparation for trial as indicated in those paragraphs of the demurrer to the indictment herein showing how and in what respect said indictment was indefinite and uncertain and how and in what respects it was impossible to obtain information therefrom as to the nature of the crime charged against this defendant.

IV.

That this defendant has suffered prejudice justifying and requiring that the verdict heretofore

entered herein be vacated and set aside in that and because said verdict is wholly and completely unsupported by any evidence showing criminal intent on the part of this defendant.

V.

That the verdict of guilty against this defendant is directly contrary to the evidence in the case.

VI.

That the verdict of guilty against this defendant is contrary to the law. [126]

VII.

That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes and by said verdict has been found guilty of two crimes as the result of a single trial.

VIII.

That prejudice has been suffered and a new trial should be granted by reason of errors committed by the Judge on the trial of said cause in the reception of evidence offered by the United States and objected to by counsel for this defendant.

IX.

That error was committed in the reception of evidence in this case of the testimony given by the defendant Mookini before the Grand Jury of the

Territory of Hawaii, which transcript was received without any restriction upon its scope as evidence and as evidence against this defendant.

X.

That error was committed by the Court in refusing to permit defendant to introduce evidence indicating the true relation of the Government's witness Miles to this defendant and to the other defendant in this case on the ground that to do so would be to permit a showing to be made of a commission of a crime by the said Miles, although said witness Miles was not required to and did not claim any constitutional privilege against self-incrimination.

XI.

That prejudice has been suffered by reason of the error committed by this court in refusing to give defendant's requested instructions Nos. Four, Nine, Thirteen and Fourteen. [127]

XII.

That prejudice has been suffered by reason of the error committed in giving over defendant's objections Government's Instructions Nos. Two, Four, Five, Nine, Ten and Fourteen.

XIII.

That prejudice has been suffered and a new trial should be granted by reason of the denial by this Court of this defendant's Motion for Bill of Particulars, and in that defendant was forced to trial in the above-entitled cause without the information

sought in said Bill of Particulars to his said defendant's prejudice.

XIV.

That prejudice has been suffered and the verdict herein should be set aside and a new trial granted by reason of the fact that after the taking of evidence in said cause had been closed and said case, after full argument and instructions to the jury, had finally been submitted to the jury for its deliberation and determination, without the knowledge of or notice to this defendant or his counsel or anyone representing him, the Honorable S. C. Huber, presiding judge in said cause, in answer to an inquiry sent in from said jury, did make and send a certain statement of fact to said jury as to the number of men enrolled at the C.C.C. Camp, which fact as so stated did not appear in the evidence in the case and was based upon information acquired by said Judge entirely outside of the record of said case, which statement was in fact in conflict with evidence in the case, and which statement of fact made by said Judge to the jury without the knowledge or approval of defendant as aforesaid, was considered by said jury and operated in the deliberations of said jury and in its effect toward inducing the verdict thereafter rendered against this defendant, to defendant's most serious prejudice. [128]

XV.

That prejudice was suffered by this defendant and error committed in the refusal of the Court to

allow defendant's offer to prove with respect to the defendant and Government's witness, Cunningham, that said Cunningham had deliberately and wilfully shot and killed a defenseless, crippled, old man at Kailua on the Island of Oahu at a time shortly prior to the time that he took employment with the C.C.C. Camp at Schofield Barracks, Oahu.

XVI.

This defendant bases this, his motion for new trial, further upon errors committed by this Honorable Court on said trial which may not now be specifically referred to by reason of the fact that the transcript of the proceedings had and evidence taken on said trial is not yet available and cannot be referred to but by reference makes all acts and rulings of the Court heretofore excepted to on behalf of this defendant grounds for this motion for new trial.

THIS MOTION IS BASED upon the records and files, notes and transcript of the proceedings had herein, and upon the affidavit of Barry S. Ulrich, hereto attached and made a part hereof.

Dated at Honolulu, Hawaii, June 7, 1935.

LEE SAU CHONG,

Defendant.

By (s) BARRY S. ULRICH

His Attorney.

Territory of Hawii,
City and County of Honolulu—ss.

LEE SAU CHONG, being first duly sworn, on oath deposes and says: That he is the Lee Sau Chong, named as defendant and in the foregoing motion for a new trial in the above-entitled cause; that he has read the said Motion for new trial, knows the contents thereof, and that the allegations thereof are true, except as to those alleged on information and belief, as to them, he believes them to be true. [129]

(s) LEE SAU CHONG

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [130]

AFFIDAVIT OF BARRY S. ULRICH.

Territory of Hawaii,
City and County of Honolulu—ss.

BARRY S. ULRICH, being first duly sworn, on oath deposes and says: That he is an attorney at law, duly licensed to practice before the bar of the above-entitled court, and the Supreme Court of the United States; that he is and at all times herein mentioned has been attorney for Lee Sau Chong, and that he makes this affidavit in support of the said defendant, Lee Sau Chong's foregoing motion for new trial.

Affiant says that on, to-wit: The 6th day of June, 1935, he did interview the Honorable S. C. Huber, Judge of the above-entitled Court in the chambers of said Judge, and did inquire of said Judge whether or not, during the deliberations of the jury in the above-entitled cause and after said cause had been submitted to them, the said Judge had made or sent to said jury any statement of facts, and your affiant says that said Judge informed your affiant that while the jury was deliberating an inquiry was sent to him, said Judge, by said jury, seeking to be informed as to how many men there were at the C.C.C. Camp at Schofield Barracks on the Island of Oahu, and that he, said Judge, did thereupon secure the information from some source not indicated to your affiant and did send a statement to said Jury in the jury room, informing them that there were at the said C.C.C. Camp between one hundred eighty and two hundred men. [131] Affiant says that said Judge informed him that he had furnished the jury with this information and statement of facts because he felt that while the jury was entitled to the information sought for, its nature did not justify a re-opening of the case. Affiant is informed and believes and therefore alleges that the said information was sent to the jury deliberating in the jury room after both sides had rested in the trial and said cause had been submitted to the jury on instructions from

the Court without the knowledge or approval of either of the defendants on trial or of their counsel.

Further affiant sayeth not.

(s) BARRY S. ULRICH

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN

Notary Public, First Judicial Circuit, Territory of Hawaii. [132]

[Title of Court and Cause.]

AFFIDAVIT OF EARL R. McGHEE IN SUPPORT OF MOTION OF LEE SAU CHONG FOR NEW TRIAL.

Filed Jun. 19, 1935 at ..... o'clock and ..... minutes ..... m. Wm. F. Thompson, Jr., Clerk, by (s) Thos. P. Cummins, Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, Hawaii
Attorney for Lee Sau Chong,
Defendant above-named. [133]

Territory of Hawaii,
City and County of Honolulu—ss.

EARL R. McGHEE, being first duly sworn, on oath, deposes and says: That he is an attorney at law, duly licensed to practice in all the Courts of the Territory of Hawaii, and that he is and at all

times has been attorney for Robert K. Mookini, one of the defendants in the above-entitled cause.

Affiant says that, following the rendition of the verdict in this case finding defendant Mookini guilty on one count and the defendant Lee Chong guilty on both counts of the indictment herein, he was informed by one of the jurors, a member of the jury in said cause and which found said verdict, that after the submission of said cause to said jury for deliberation and determination upon instructions given by the Court at the conclusion of the trial and after said jury had been deliberating and unable to agree upon a verdict for a period of several hours, it was suggested by one or more of the jurors that an inquiry be made of the Judge that the jury be informed as to how many men there were at the Civilian Conservation Camp on May 12th, and at the time of the Mother's Day dinner referred to in the evidence in the case, and that said members of said jury desired said infor-
ma- [134] tion for such bearing as it might have upon the question of the probability or improbability of the delivery for use at said dinner of the items of four hundred pounds of pumpkin and four hundred pounds of squash referred to and set forth in count one of the indictment herein. Affiant says that he was informed by said juror and believes and upon such information and belief therefore further alleges that such inquiry was thereupon sent to the Honorable S. C. Huber, Judge in said cause, asking that said Judge do inform the

jury as to how many men there were at said Camp at said time, and that in response to said inquiry the Judge did send to said jury in the jury room a written statement setting forth and stating as a fact that there were at said Camp between one hundred eighty and two hundred men.

Affiant says that he was further informed by said juror and believes, and on such information and belief therefor alleges that said note, coming from said Judge, and the information therein was seen and was considered by certain of the members of said jury, and that it did have an effect with said members in inducing the bringing in of a verdict, said verdict being found and returned by said jury within an hour from the receipt of said information from said Judge, after said jury for a period of approximately nine hours prior thereto had been unable to agree upon a verdict, and that said information thus received by said jury from the Judge did definitely influence certain of said jury adversely to the defendants herein.

Affiant further says that the information thus furnished by the Court was, as indicated by the record in this case, inaccurate and misleading in that, whereas affiant was informed by said juror and alleges, upon such information and belief, that certain members of said jury were influenced by the information contained in said note for the reason that they were led to con- [135] clude that between one hundred eighty and two hundred men would not justify a delivery of the amount of pump-

kin and squash indicated, the fact was and is as shown by the record in this case that said Mother's Day meal was prepared for and served to some two hundred fifty persons.

Further than this affiant sayeth not save that this affidavit is made in support of that certain Motion for New Trial heretofore filed on behalf of defendant Lee Sau Chong herein.

(s) EARL R. McGHEE

Subscribed and sworn to before me this 19th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [136]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL AND AFFIDAVIT OF BARRY S. ULRICH.

Filed Jun. 7, 1935 at 12 o'clock and 05 minutes a.m. Wm. F. Thompson, Jr., Clerk, by (s) E. Langwith, Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Bldg.
Honolulu, Hawaii
Attorneys for Rokert K. Mookini,
Defendant above-named. [137]

MOTION FOR NEW TRIAL.

Comes now ROBERT K. MOOKINI, defendant above-named, and shows unto this Honorable Court that after trial duly had in the above-entitled matter, and on, to-wit: the 28th day of May, 1935, the jury in the above-entitled cause did return and enter its verdict against him, said defendant, of guilty on the first count of the indictment herein, and said defendant now moves this Honorable Court that it do make and enter its order vacating and setting aside the said verdict of guilty and granting to this defendant a new trial in said cause, and as grounds for this, his said motion, said defendant shows unto this Honorable Court as follows:

I.

That defendant has suffered serious prejudice herein in the action of this Court in overruling defendant's demurrer to the indictment, wherein, among other things, it was claimed that it was impossible for said defendant to ascertain from said indictment in what manner it was claimed that he, together with three other defendants, had jointly participated in the making and presentment of fraudulent claims for payment, wherefore it [138] was impossible for said defendant to properly prepare for trial.

II.

That this defendant suffered prejudice in that he was forced to trial without opportunity being given

to acquire information vital to the preparation for trial as indicated in those paragraphs of the demurrer to the indictment herein showing how and in what respect said indictment was indefinite and uncertain and how and in what respects it was impossible to obtain information therefrom as to the nature of the crime charged against this defendant.

III.

That this defendant has suffered prejudice justifying and requiring that the verdict heretofore entered herein be vacated and set aside in that and because said verdict is wholly and completely unsupported by any evidence showing criminal intent on the part of this defendant.

IV.

That the verdict of guilty against this defendant is directly contrary to the evidence in the case.

V.

That the verdict of guilty against this defendant is contrary to the law.

VI.

That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes. [139]

VII.

That prejudice has been suffered and a new trial should be granted by reason of errors committed

by the Judge on the trial of said cause in the reception of evidence offered by the United States and objected to by counsel for this defendant.

VIII.

That error was committed in the reception of evidence in this case of the testimony given by this defendant before the Grand Jury of the Territory of Hawaii, which transcript was received without any restriction upon its scope as evidence and as evidence against this defendant.

IX.

That error was committed by the Court in refusing to permit defendant to introduce evidence indicating the true relation of the Government's witness Miles to this defendant and to the other defendant in this case on the ground that to do so would be to permit a showing to be made of a commission of a crime by the said Miles, although said witness Miles was not required to and did not claim any constitutional privilege against self-incrimination.

X.

That prejudice has been suffered by reason of the error committed by this court in refusing to give defendant's requested instructions Nos. Four, Nine and Fourteen.

XI.

That prejudice has been suffered by reason of the error committed in giving over defendant's ob-

jections Government's Instructions Nos. Two, Four, Five, Nine, Ten and Fourteen.

XII.

That prejudice has been suffered and the verdict herein should be set aside and a new trial granted by reason of the fact that after the taking of evidence in said cause had been closed [140] and said case, after full argument and instructions to the jury, had finally been submitted to the jury for its deliberation and determination, without the knowledge of or notice to this defendant or his counsel or anyone representing him, the Honorable S. C. Huber, presiding judge in said cause, in answer to an inquiry sent in from said jury, did make and send a certain statement of fact to said jury as to the number of men enrolled at the C. C. C. Camp, which fact as so stated did not appear in the evidence in the case and was based upon information acquired by said Judge entirely outside of the record of said case, which statement was in fact in conflict with evidence in the case, and which statement of fact made by said Judge to the jury without the knowledge or approval of defendant as aforesaid, was considered by said jury and operated in the deliberations of said jury and in its effect toward inducing the verdict thereafter rendered against this defendant, to defendant's most serious prejudice.

XIII.

That prejudice was suffered by this defendant and error committed in the refusal of the Court to allow defendant's offer to prove with respect to the defendant and Government's witness, Cunningham, that said Cunningham had deliberately and wilfully shot and killed a defenseless, crippled, old man at Kailua on the Island of Oahu at a time shortly prior to the time that he took employment with the C. C. C. Camp at Schofield Barracks, Oahu.

XIV.

This defendant bases this, his motion for new trial further upon errors committed by this Honorable Court on said trial which may not now be specifically referred to by reason of the fact that the transcript of the proceedings had and evidence [141] taken on said trial is not yet available and cannot be referred to, but by reference makes all acts and rulings of the Court heretofore excepted to on behalf of this defendant grounds for his motion for a new trial.

This motion is based upon the records and files, and notes and transcript of the proceedings had herein, and upon the affidavit of Barry S. Ulrich, hereto attached and made a part hereof.

Dated at Honolulu, Hawaii, June 7, 1935.

ROBERT K. MOOKINI,
Defendant.

By (s) BARRY S. ULRICH
His Attorney.

Territory of Hawaii,
City and County of Honolulu.

ROBERT K. MOOKINI, being first duly sworn, on oath deposes and says: That he is the Robert K. Mookini named as defendant and in the foregoing motion for new trial; that he has read the same, knows the contents thereof, and that the allegations thereof are true, except as to those alleged on information and belief, and as to them, he believes them to be true.

(s) ROBERT K. MOOKINI

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public in and for the First Judicial Circuit, Territory of Hawaii. [142]

AFFIDAVIT OF BARRY S. ULRICH

Territory of Hawaii,
City and County of Honolulu—ss.

BARRY S. ULRICH, being first duly sworn, on oath deposes and says: That he is an attorney at law, duly licensed to practice before the bar of the above-entitled court, and the Supreme Court of the United States; that he is and at all times herein mentioned has been attorney for Robert K. Mookini, and that he makes this affidavit in support of the said defendant, Robert K. Mookini's foregoing motion for new trial.

Affiant says that on, to-wit: The 6th day of June, 1935, he did interview the Honorable S. C. Huber,

Judge of the above-entitled Court, in the chambers of said Judge, and did inquire of said Judge whether or not, during the deliberations of the jury in the above-entitled cause and after said cause had been submitted to them, the said Judge had made or sent to said jury any statement of facts, and your affiant says that said Judge informed your affiant that while said jury was deliberating an inquiry was sent to him, said Judge, by said jury, seeking to be informed as to how many men there were at the C. C. C. Camp at Schofield Barracks on the Island of Oahu, and that he, said Judge, did thereupon secure the information from some source not indicated to your affiant and did send a statement to said Jury in the jury room, informing them that there were at the said C. C. C. Camp between one hundred eighty and two hundred men. Affiant says that said Judge informed him that he had furnished the jury with this information and statement of facts because he felt that while the jury was entitled to the information sought for its nature did not justify a re-opening of the case. [143] Affiant is informed and believes and therefore alleges that the said information was sent to the jury deliberating in the jury room after both sides has rested in the trial and said cause had been submitted to the jury on instructions from the Court without the knowledge or approval of either of the defendants on trial or of their counsel.

Further than this affiant sayeth not.

(s) BARRY S. ULRICH

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [144]

[Title of Court and Cause.]

AFFIDAVIT OF EARL R. McGHEE IN SUPPORT OF MOTION OF ROBERT K. MOOKINI FOR NEW TRIAL.

Filed Jun. 19, 1935 at.....o'clock and.....minutes .....m.

WM. F. THOMPSON, JR.,
Clerk.
By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Robert K. Mookini,
Defendant above-named. [145]

Territory of Hawaii,
City and County of Honolulu—ss.

EARL R. McGHEE, being first duly sworn, on oath deposes and says: That he is an attorney at law, duly licensed to practice in all the Courts of the Territory of Hawaii, and that he is and at all

times has been attorney for Robert K. Mookini, one of the defendants in the above-entitled cause.

Affiant says that, following the rendition of the verdict in this case finding defendant Mookini guilty on one count and the defendant Lee Chong guilty on both counts of the indictment herein, he was informed by one of the jurors, a member of the jury in said cause and which found said verdict, that after the submission of said cause to said jury for deliberation and determination upon instructions given by the Court at the conclusion of the trial and after said jury had been deliberating and unable to agree upon a verdict for a period of several hours, it was suggested by one or more of the jurors that an inquiry be made of the Judge that the jury be informed as to how many men there were at the Civilian Conservation Camp on May 12th, and at the time of the Mother's Day dinner referred to in the evidence [146] in the case, and that said members of said jury desired said information for such bearing as it might have upon the question of the probability or improbability of the delivery for use at said dinner of the items of four hundred pounds of pumpkin and four hundred pounds of squash referred to and set forth in count One of the indictment herein. Affiant says that he was informed by said juror and believes and upon such information and belief therefore further alleges that such inquiry was thereupon sent to the Honorable S. C. Huber, Judge in said cause, asking that said Judge do inform the jury as to how many

men there were at said Camp at said time, and that in response to said inquiry the said Judge did send to said jury in the jury room a written statement setting forth and stating as a fact that there were at said Camp between one hundred eighty and two hundred men.

Affiant says that he was further informed by said juror and believes, and on such information and belief therefore alleges that said note, coming from said Judge, and the information therein was seen and was considered by certain of the members of said jury, and that it did have an effect with said members in inducing the bringing in of a verdict, said verdict being found and returned by said jury within an hour from the receipt of said information from said Judge, after said jury for a period of approximately nine hours prior thereto had been unable to agree upon a verdict, and that said information thus received by said jury from the Judge did definitely influence certain of said jury adversely to the defendants herein.

Affiant further says that the information thus furnished by the Court was, as indicated by the record in this case, inaccurate and misleading in that, whereas affiant was informed by said juror and alleges, upon such information and belief, that certain members of said jury were influenced by the information contained in said note for the reason that they were led to con- [147] clude that between one hundred eighty and two hundred men would not justify a delivery of the amount of pumpkin and

squash indicated, the fact was and is as shown by the record in this case that said Mother's Day meal was prepared for and served to some two hundred fifty persons.

Further than this affiant sayeth not save that this affidavit is made in support of that certain Motion for New Trial heretofore filed on behalf of defendant Robert K. Mookini herein.

(s) EARL R. McGHEE

Subscribed and sworn to before me this 19th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [148]

[Title of Court and Cause.]

BOND

Filed Jul. 5, 1935 at 1 o'clock and 40 minutes P. M.

WM. F. THOMPSON, Jr.,
Clerk.
By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, T. H.
Attorney for Defendant,
Robert K. Mookini. [149]

KNOW ALL MEN BY THESE PRESENTS:

That, we, ROBERT K. MOOKINI, as Principal and Manuel Freitas, Marie M. Mookini and Stanley T. Miyamoto as Sureties are held and firmly bound unto the United States of America in the full sum of Twenty Five Hundred Dollars ($2,500.00) for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

WHEREAS, lately at the April Term A. D., 1935, of the District Court for the United States in and for the District and Territory of Hawaii, judgment and sentence were made and entered against the said ROBERT K. MOOKINI, defendant above named, and

WHEREAS, notice has been given of appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to secure a reversal of said judgment and sentence, and

WHEREAS, the Honorable S. C. Huber, Judge of said District Court, did regularly order that a supersedeas and bail bond be given in the sum of Twenty Five Hundred Dollars ($2,500.00) pending said appeals. [150]

NOW, THEREFORE, the condition of the above obligation is such that if the said Robert K. Mookini shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide

by and obey all orders made by said Circuit Court in said cause, and shall pay any fines, charges and all costs imposed by the judgment of said District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a re-trial of said cause, and abide by and obey all the orders made by said District Court provided the judgment and sentence made against him shall be reversed by said Circuit Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

IN WITNESS WHEREOF the above bounden principal and sureties have hereto affixed their hands this 2nd day of July, 1935.

(s) ROBERT K. MOOKINI
Principal.

(s) MANUEL FREITAS
(s) MARIE M. MOOKINI
(s) STANLEY T. MIYAMOTO
Sureties [151]

Territory of Hawaii,
City and County of Honolulu—ss.

MARIE M. MOOKINI, being first duly sworn on oath deposes and says: That she is the Marie M. Mookini named as Surety and who signed the foregoing Bond and that she is worth the sum of Twenty Five Hundred Dollars ($2,500.00) over and above

all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

(s) MARIE M. MOOKINI

Subscribed and sworn to before me this 2nd day of July, 1935.

[Seal] (s) TATSUYO HIRASHIMA
Notary Public, First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

STANLEY T. MIYAMOTO, being first duly sworn on oath deposes and says: That he is the Stanley T. Miyamoto named as Surety and who signed the foregoing Bond and that he is worth the sum of Twenty Five Hundred Dollars ($2,500.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

(s) STANLEY T. MIYAMOTO

Subscribed and sworn to before me this the 2nd day of July, 1935.

[Seal] (s) TATSUYO HIRASHIMA
Notary Public, First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

MANUEL FREITAS, being first duly sworn on oath deposes and says: That he is the Manuel Freitas, named as Surety and who signed the fore-

going Bond and that he is worth the sum of Twenty Five Hundred Dollars ($2,500.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

(s) MANUEL FREITAS

Subscribed and sworn to before me this 2nd day of July, 1935.

[Seal] (s) TATSUYO HIRASHIMA
Notary Public, First Judicial Circuit, Territory of Hawaii.

Approved as to form:

(s) I. M. STAINBACK
United States Attorney.

Approved as to amount and sufficiency of surety:

(s) S. C. HUBER
Judge, United States District Court. [152]

AFFIDAVIT

Territory of Hawaii
City and County of Honolulu—ss.

STANLEY T. MIYAMOTO, being first duly sworn on oath deposes and says: That he is the owner of the following listed property, to-wit:

Two parcels of land on the Island of Hawaii known as the Olaa Summer Lots, having a taxable value for 1935 of $500.00,

One Waiakea Beach Lot, South Hilo, Hawaii, having an assessed value for 1935 of $2,000.00.

$1,000.00 on deposit with the Bank of Bishop, Honolulu, T. H.

One Sport Plymouth Coupe, Model 1933, with a market value of $550.00,

That said property has an aggregate value of approximately $4,050.00, and that the same is free and clear of all liens and encumbrances whatsoever.

(s) STANLEY T. MIYAMOTO

Subscribed and sworn to before me this the 5th day of July, 1935.

[Seal] (s) WALTER H. YOKOTE
Notary Public, First Judicial Circuit, Territory of Hawaii. [153]

AFFIDAVIT

Territory of Hawaii,
City and County of Honolulu—ss.

MARIE M. MOOKINI, being first duly sworn on oath deposes and says that she is the owner of the following listed property, viz:

Lot 50, Lunalilo Tract, Clio and Piikoi Streets, having an area of approximately 6900 square feet, with an assessed value for the year 1935 of $1144.00,

One Packard Club Sedan, Model 1930, with a present day value of $500.00,

75 shares, Commercial Credit Corporation, with a value of $750.00,

100 shares, U. S. Petroleum, worth about $100.00,

5 shares, American Security Bank, worth $100.00,

Undivided 1/7 interest in land on Kauai, worth $300.00;

that said property has an aggregate value of approximately $2900.00, that the same is free and clear of all liens and encumbrances whatsoever.

(s) MARIE M. MOOKINI

Subscribed and sworn to before me this the 3rd day of July, 1935.

[Seal] (s) WALTER H. YOKOTE
Notary Public, First Judicial Circuit, Territory of Hawaii. [154]

AFFIDAVIT.

Territory of Hawaii,
City and County of Honolulu.—ss.

MANUEL FREITAS, being first duly sworn on oath deposes and says: That he is the owner in fee simple of two parcels of land situate at 1737 Houghtailing Road, Honolulu, having an area of 11,220 square feet with two houses thereon, having a total assessed value for the year 1935 of $2,590.00; that this property is free and clear of all liens and encumbrances whatsoever.

/s/ MANUEL FREITAS.

Subscribed and sworn to before me this the 3rd day of July, 1935.

[Seal] /s/ WALTER H. YOKOTE,
Notary Public, First Judicial Circuit, Territory of Hawaii. [155]

[Title of Court and Cause.]

BOND.

Filed Jul. 5, 1935 at 2 o'clock and 05 minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH,
317 Dillingham Building,
Honolulu, T. H.,
Attorney for defendant,
Lee Sau Chong. [156]

KNOW ALL MEN BY THESE PRESENTS:

That, we, LEE SAU CHONG, as Principal and L. C. Yee Shee and HEU LING SEE KYAU, as Sureties are held and firmly bound unto the United States of America in the full sum of Five Thousand Dollars ($5,000.00) for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

WHEREAS, lately at the April Term A. D., 1935, of the District Court for the United States in and for the District and Territory of Hawaii, judgment and sentence were made and entered against the said LEE SAU CHONG, defendant above named, and

WHEREAS, notice has been given of appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to secure a reversal of said judgment and sentence, and

WHEREAS, the Honorable S. C. Huber, Judge of said District Court, did regularly order that a supersedeas and bail bond be given in the sum

of Five Thousand Dollars ($5,000.00) pending said appeals. [157]

NOW, THEREFORE, the condition of the above obligation is such that if the said Lee Sau Chong shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide by and obey all orders made by said Circuit Court in said cause, and shall pay any fines, damages and all costs imposed by the judgment of said District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a re-trial of said cause and abide by and obey all the orders made by said District Court provided the judgment and sentence made against him shall be reversed by said Circuit Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

IN WITNESS WHEREOF the above bounden principal and sureties have hereto affixed their hands this 3rd day of July, 1935.

/s/ LEE SAU CHONG,
Principal.

/s/ L. C. YEE SHEE,
/s/ HEU LING SEE KYAU,
Sureties. [158]

Territory of Hawaii
City and County of Honolulu—ss.

L. C. YEE SHEE being first duly sworn on oath deposes and says: That she is the L. C. Yee named as Surety and who signed the foregoing Bond and that she is worth the sum of Five Thousand Dollars ($5,000.00) over and above all just debts and liabilities in property, situate in the Territory of Hawaii and subject to execution.

/s/ L. C. YEE SHEE.

Subscribed and sworn to before me this 3rd day of July, 1935.

[Seal] /s/ TIM S. ING,
Notary Public, 1st Judicial Cir. Territory of Hawaii.

Territory of Hawaii
City and County of Honolulu—ss.

HEU LING SEE KYAU being first duly sworn on oath deposes and says: That she is the Heu Ling See Kyau named as Surety and who signed the foregoing Bond and that she is worth the sum of Five Thousand Dollars ($5,000.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

/s/ HEU LING SEE KYAU.

Subscribed and sworn to before me this 3rd day of July, 1935.

[Seal] /s/ TIM S. ING,
Notary Public, 1st Judicial Circuit, Territory of Hawaii.

Approved as to form:

/s/ I. M. STAINBACK,
United States Attorney.

Approved as to amount and sufficiency of surety:

/s/ S. C. HUBER,
Judge, United States
District Court. [159]

[Title of Court and Cause.]

NOTICE OF APPEAL.

Filed Sep. 27, 1935, at 4 o'clock and — minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building,
Honolulu, Hawaii,
Attorneys for defendants-appellants. [160]

To: THE UNITED STATES OF AMERICA, and to INGRAM M. STAINBACK, its attorney:

PLEASE TAKE NOTICE that ROBERT K. MOOKINI and LEE SAU CHONG, two of the defendants above-named, hereby appeal to the United States *District* Court of Appeals for the Ninth Circuit, from the verdict, decision, judgment and sentence heretofore entered herein with respect to said defendants on the 29th day of June, 1935.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG.
By /s/ BARRY S. ULRICH,
By /s/ EARL R. McGHEE,
Their Attorneys. [161]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Filed Sep. 27, 1935 at 4 o'clock and — minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building,
Honolulu, Hawaii,
Attorneys for Appellants.

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

/s/ WILLSON C. MOORE,
Ass't. U. S. Attorney, Hawaii.
[162]

Come now the above-named ROBERT K. MOOKINI and LEE SAU CHONG, two of the above-named defendants, by and through their attorneys, Barry S. Ulrich and Earl R. McGhee, and feeling themselves aggrieved by the judgment of this Court made and entered herein on the 29th day of June, 1935, where and whereby the said defendants were

sentenced to be imprisoned and fined as set forth in said judgment made and entered herein by the Court in said cause, to which judgment reference is hereby made for greater particularity, and say that petitioners are advised by counsel, and that, therefore, they aver that there was and is manifest error in the record and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury of your petitioners, all of which errors will be fully made to appear by an examination of the Assignment of Errors and Bill of Exceptions filed herein and presented herewith.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants above-named.
By /s/ BARRY S. ULRICH,
By /s/ EARL R. McGHEE,
Their Attorneys. [163]

The foregoing appeal is allowed. The supersedeas bond in the sum as heretofore specified and filed and a cost bond on appeal in the sum of Five Hundred Dollars ($500.00) are approved.

Dated at Honolulu, Hawaii, September 27, 1935.

/s/ S. C. HUBER,
Judge, District Court of the United States in and for the District and Territory of Hawaii. [164]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Filed Sep. 27, 1935 at 4 o'clock and — minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building,
Honolulu, Hawaii,
Attorneys for Appellants.

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

/s/ WILLSON C. MOORE,
Ass't. U. S. Attorney, Hawaii.

[165]

Come now ROBERT K. MOOKINI and LEE SAU CHONG, two of the defendants above-named, and appellants in the above-entitled cause, and say that in the record, proceedings, verdict, judgment and decision of the United States District Court for the District and Territory of Hawaii in said cause lately pending in said court, there are manifest, material and prejudicial errors, and said Robert K. Mookini and Lee Sau Chong now make, file and present the following Assignment of Errors, upon each of which they jointly and severally rely, to-wit:

ASSIGNMENT NO. I.

The court erred in overruling the demurrers to the indictment herein filed by defendants Robert K. Mookini and Lee Sau Chong.

ASSIGNMENT NO. II.

The court erred in overruling the motion of defendant Lee Sau Chong that his cause as a defendant in said action be severed for the purpose of trial from the cause of the other defendants herein. [166]

ASSIGNMENT NO. III.

The court erred in refusing to permit counsel for Robert K. Mookini and Lee Sau Chong, upon cross-examination of witness for the prosecution, William E. Miles, to prove by said witness, after due offer was made of such proof, that said witness had converted to his own use $240.00 belonging to the Civilian Conservation Corps fund; that defendant Mookini became aware of such conversion and that thereupon said witness placed charges against said Mookini resulting in the dismissal of the latter from the services of the United States Government as an employee at the Civilian Conservation Corps camp at Schofield Barracks, which action on the part of said witness showed a distinct reason for an animus on the part of said witness with respect to said Mookini and indicated the position of witness with respect to transactions involved in the indictment herein, showing why witness made charges against

said Mookini, and which proof affected the credibility of said witness by showing his interest and bias with respect to his co-defendants.

ASSIGNMENT NO. IV.

That the court erred in refusing counsel for defendants Robert K. Mookini and Lee Sau Chong to prove upon cross-examination of witness for the prosecution, William E. Miles, the circumstances under which said witness borrowed $200.00 from defendant Lee Sau Chong and gave said defendant his promissory note therefor.

ASSIGNMENT NO. V.

The court erred in permitting and allowing witness for the prosecution, John E. Cunningham, to testify over the objection of counsel for the defendants as to conversations had between said witness and defendant Lee Sau Chong, not in the presence of said Defendant Robert K. Mookini, concerning statements made and conversation had between witness and said Mookini. [167]

ASSIGNMENT No. VI.

The court erred in permitting and allowing said witness for the prosecution, John E. Cunningham, to testify over the objection of counsel for the defendants, as to conversations had between said witness and Robert K. Mookini on or about June 4, 1934.

ASSIGNMENT No. VII.

The court erred in permitting and allowing witness for the prosecution, John E. Cunningham, upon his direct examination, and over the objection of counsel for the defendants, to testify to the effect that witness and defendants Robert K. Mookini and Lee Sau Chong for the month of June, 1934, had made and presented to the United States Government a certain fictitious voucher or claim for approximately $72.00, such claim allegedly representing supplies furnished defendant Mookini by defendant Lee Sau Chong.

ASSIGNMENT No. VIII.

The court erred in refusing and not permitting counsel for defendants, Robert K. Mookini and Lee Sau Chong, upon the cross-examination of witness for the prosecution, John E. Cunningham, to prove by said witness, after offer of such proof had been made, that said witness had in April or May, 1933, killed a man and that said killing was inquired into by a Territorial Grand Jury which did not return an indictment against said witness.

ASSIGNMENT No. IX.

The court erred in permitting and allowing witness for the prosecution Charles I. Deville, to testify on direct examination and over the objection of counsel for the defendants, as to statements made and conversations had by witness and Lee Sau Chong with reference to certain alleged ficti-

tious items listed upon United States Exhibits "D", "G" and "J". [168]

ASSIGNMENT No. X.

The Court erred in refusing, after both plaintiff and defendants had rested their respective cases, to enter an order directing a verdict of "not guilty" as to said defendants Robert K. Mookini and Lee Sau Chong.

ASSIGNMENT No. XI.

The court erred in permitting and allowing the plaintiff, upon the cross-examination of defendant Robert K. Mookini, to examine said witness upon a portion only of the testimony previously given by said witness before the United States Grand Jury which returned the indictment herein against said defendant.

ASSIGNMENT No. XII.

That said court erred in permitting and allowing the plaintiff to produce and introduce in evidence at the trial herein a transcript of the notes of testimony given by defendant Robert K. Mookini before the United States Grand Jury which returned the indictment herein against said defendant.

ASSIGNMENT No. XIII.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"You are instructed that the Camp Director of the Civilian Conservation Corps is an officer in the civil service of the United States. You are further instructed that it appears from the evidence in this case that said Camp Director was charged with the duty of disbursing what is known as the mess fund, and there is further evidence that he also handled a canteen fund, the mess fund being a Government realization while the canteen fund belonged wholly to the members of the Civilian Conservation Corps, and said canteen fund was not a fund belonging to the Government of the United States."

[169]

ASSIGNMENT No. XIV.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"You are instructed that the word 'fraud' means the intentional employment of any cunning, deception or artifice used to circumvent, cheat or deceive another."

ASSIGNMENT No. XV.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime,

and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts."

ASSIGNMENT No. XVI.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"A reasonable doubt is not a fanciful doubt, but such a doubt raised by the evidence as a reasonable man can give a reason for. The law does not require that the government shall prove an accused guilty beyond all possible doubt, but the law does require the government shall prove each and every one of the material allegations of the indictment to your satisfaction and beyond all doubt that is reasonable, in other words, it must satisfy you as reasonable men of the guilt of the accused and satisfy you beyond a reasonable doubt.

"You are the exclusive judges of the credibility of the witnesses and of the weight to be attached to their testimony, but the law you must take from the court whether or not you, in your own minds, believe the court to be correct. To pass upon the law is the exclusive

province of the court, but to pass upon the facts and apply to such facts the law as given by the court is the exclusive province of the jury, and in this connection I instruct you that, although the Judge legally may comment upon the facts and give his opinion, nevertheless that is the opinion of the Judge only and the final responsibility of deciding the facts rests with you. [170]

"In determining the credibility of a witness you may take into consideration his interest, bias, prejudice, motives, or feelings of revenge, if any, his manner of testifying, his demeanor on the witness stand and the probability or improbability of the story told by him, or any other thing which a reasonable man would consider in determining whether or not he believed a witness. If you believe that any witness has wilfully testified falsely or wilfully misled you as to any material fact in the case, you may disregard his entire testimony except such part as may be corroborated by other credible evidence, or believed by you to be true."

ASSIGNMENT No. XVII.

The court erred in giving to the jury, over the objections of these defendants the following instruction on behalf of the plaintiff:

"Gentlemen of the Jury, you are instructed that if you find and believe from the evidence beyond a reasonable doubt that the defendants

named in this indictment, or any of them, agreed between themselves or conspired together to make, cause to be made, present or cause to be presented for approval or payment the vouchers covered by Counts I or II of the indictment, and that in pursuance thereof said vouchers, or either of them, were so made, presented or caused to be presented with intent to defraud the United States Government or any department thereof, then I charge you that any act or declaration of such agreeing defendant or defendants in furtherance of said common purpose done or said by him or them in the absence of any other defendant is legal evidence in this case against each of the said agreeing defendants and may be considered by you in finding your verdict."

ASSIGNMENT No. XVIII.

The court erred in refusing to give at the request of the defendants the following instruction to the jury:

"You, gentlemen of the jury, are the sole and exclusive judges of the sufficiency of the evidence and of the credibility of the witnesses in this case, and in passing upon the credibility of such witnesses you have a right, and it is your duty, to take into consideration their prejudices, motives, feelings of revenge, the inducements held out to them to testify, or any other influences surrounding them which may

have operated to induce them to testify in a particular way, if any such have been shown by the evidence in this case." [171]

ASSIGNMENT No. XIX.

The court erred in refusing to give at the request of the defendants the following instruction to the jury:

"If you believe from the evidence that the certain items appearing in Counts I and II of said indictment herein were not actually delivered to said Civilian Conservation Camp, but do believe that other articles of equal value were delivered to said camp by said Lee Chong Company, then it is your duty to find the defendants not guilty."

ASSIGNMENT No. XX.

The Court erred in refusing to give at the request of the defendants the following instruction to the jury:

"I further instruct you that the purpose of the statute or law under which these defendants have been indicted and prosecuted is to prohibit and punish the drawing of money from the Treasury of the United States without having rendered legal and authorized equivalents therefor."

ASSIGNMENT No. XXI.

The court erred in refusing to give at the request of the defendants the following instruction

"And I further instruct you that if you believe from the evidence that Defendant Mookini had no knowledge of the changes or alterations which were made in the Mother's Day bill until on or about September 13, 1934, and had no knowledge with respect to the changes or alterations which were made in the Labor Day bill until on or about October 5, 1934, then you will find this defendant not guilty."

ASSIGNMENT No. XXII.

Said court erred in giving its judgment and imposing sentence herein with respect to defendants Robert K. Mookini and Lee Sau Chong.

ASSIGNMENT No. XXIII.

The Court erred in refusing to grant the motion of defendant Robert K. Mookini for a new trial in said cause.

ASSIGNMENT No. XXIV.

The court erred in refusing to grant the motion of defendant Lee Sau Chong for a new trial in said cause. [172]

ASSIGNMENT No. XXV.

The court erred in giving information to and communicating with the jury as to facts or evidence relating to said cause while said jury was deliberating of its verdict in said cause, such information being given or communication had in

the absence of counsel for the defendants Robert K. Mookini and Lee Sau Chong.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG.
By /s/ BARRY S. ULRICH,
E. M.
By /s/ EARL R. McGHEE,
Their Attorneys. [173]

[Title of Court and Cause.]

CITATION ON APPEAL

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building
Honolulu, Hawaii
Attorneys for Appellants

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

WILLSON C. MOORE
Ass't U. S. Attorney, Hawaii. [174]

The United States of America—ss.

The President of the United States of America and Ingram M. Stainback, Its Attorney: GREETING:

YOU ARE HEREBY CITED and ADMONISHED to be and appear at the United States Cir-

cuit Court of Appeals for the Ninth Circuit to be held in the City and County of San Francisco, State of California, within thirty (30) days from the date of this return, pursuant to an order allowing appeal filed in the Clerk's Office of the United States District Court for the District and Territory of Hawaii wherein Robert K. Mookini and Lee Sau Chong are appellants and you are the appellee, to show cause, if any there be, why the verdict, judgment and sentence in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States of America, this 27th day of September, A. D. 1935, and of the independence of the United States of America the Three Hundred Fifty-fifth.

[Seal] S. C. HUBER

Judge, United States District Court of the District and Territory of Hawaii. [175]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

Filed Sep. 27, 1935 at 4 o'clock and.....minutes p. m.

(s) WM. F. THOMPSON, Jr.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Appellants

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

(s) WILLSON C. MOORE
Ass't U. S. Attorney, Hawaii. [176]

[Title of Court and Cause.]

To the Clerk of the Above-entitled Court:

Sir:

Please prepare transcript on Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit to be composed of the following papers:

1. Indictment.
2. Demurrer of Robert K. Mookini.
3. Demurrer of Lee Sau Chong.
4. Order overruling said demurrers.
5. Exceptions to order overruling said demurrers.
6. Motion for bill of particulars.
7. Order denying motion for bill of particulars.
8. Motion for Severance and affidavit.
9. Order overruling motion for severance.
10. Instructions given for the plaintiff.
11. Instructions given for the defendants.
12. Verdict.
13. Judgment and sentence.
14. Motion for new trial by defendants Robert K. Mookini and Lee Sau Chong and affidavits in support thereof.
15. Order overruling motion for new trial. [177]
16. Exceptions to ruling on motion for new trial.

16a. Notice of Appeal.
17. Petition for appeal and order allowing appeal.
18. Recognizance bond.
19. Bond for costs on appeal.
20. Citation on appeal.
21. Assignments of errors.
22. Bill of exceptions and order allowing bill of exceptions.
23. Praecipe.
24. All minutes and entries made by you or anyone else in the above-entitled cause; all exhibits, transcript of testimony, and all other pleadings and exhibits filed in this cause not specifically mentioned above.

Dated at Honolulu, Hawaii, this 27th day of September, 1935.

Respectfully requested,
ROBERT K. MOOKINI and
LEE SAU CHONG,
Appellants
By BARRY S. ULRICH
(s) E. M.
By (s) EARL R. McGHEE
Their attorneys. [178]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Oct. 12, 1935 at 11 o'clock and 17 minutes a. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building
Honolulu, T. H.
Attorney for Appellants [179]

On reading and filing of the annexed consent to the entry of this order, dated this the 12th day of October, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 12th day of November, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 12th day of November, 1935.

Dated at Honolulu, T. H., this the 12th day of October, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [180]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., this the 12th day of October, 1935.

UNITED STATES OF AMERICA,
Plaintiff
By (s) WILLSON C. MOORE
Assistant United States Attorney.
ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants,
By BARRY ULRICH (s) E. M.
and
(s) EARL R. McGHEE
Attorneys for Appellants. [181]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Nov. 12, 1935 at .....O'clock and .....minutes.....m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building
Honolulu, T. H.
Attorneys for Appellants. [182]

On reading and filing of the annexed consent to the entry of this order, dated this the 12th day of November, 1935, by the attorneys for the United

States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 23rd day of November, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 23rd day of November, 1935.

Dated at Honolulu, T. H., this the 12th day of November, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [183]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., this the 12th day of November, 1935.

UNITED STATES OF AMERICA,
Plaintiff,
By (s) WILLSON C. MOORE
Assistant United States Attorney.
ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants,
By (s) BARRY S. ULRICH and
(s) EARL R. McGHEE
Attorneys for Appellants. [184]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Nov. 23, 1935 at 11 o'clock and 23 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.
By (s) E. LANGWITH
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for defendants, Robert K. Mookini and Lee Sau Chong. [185]

On reading and filing of the annexed consent to the entry of this order, dated this 22nd day of November, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above-named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 30th day of November, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 30th day of November, 1935.

Dated at Honolulu, T. H., this 22nd day of November, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [186]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., November 22, 1935.

UNITED STATES OF AMERICA,
Plaintiff

By (s) WILLSON C. MOORE
Assistant United States Attorney

ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants,

By (s) BARRY S. ULRICH and
(s) E. R. McGHEE
Their Attorneys. [187]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Nov. 30, 1935 at 10 o'clock and 30 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.

By (s) E. LANGWITH
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Robert K. Mookini and Lee Sau Chong. [188]

On reading and filing of the annexed consent to the entry of this order, dated this 29th day of November, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above-named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 14th day of December, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 14th day of December, 1935.

Dated at Honolulu, T. H., this 29th day of November, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [189]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., November 29, 1935.

UNITED STATES OF AMERICA,
Plaintiff,

By (s) WILLSON C. MOORE
Assistant United States Attorney
ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants

By (s) BARRY S. ULRICH and
(s) E. R. McGHEE
Their attorneys. [190]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Dec. 14, 1935 at 11 o'clock and 5 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.

By (s) E. LANGWITH
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Attorneys for defendants,
Mookini and Lee Chong [191]

On reading and filing of the annexed consent to the entry of this order, dated this 14th day of December, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants-above-named;

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 21st day of December, 1935, and that the term of this court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 21st day of December, 1935.

Dated at Honolulu, T. H., this 14th day of December, 1935.

(s) S. C. HUBER
Judge of the above-entitled court. [192]

We hereby consent to the entry of the above and foregoing order.

Dated at Honolulu, T. H., December 14, 1935.

UNITED STATES OF AMERICA,
Plaintiff.

By (s) WILLSON C. MOORE
Assistant United States Attorney

ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants.

By (s) BARRY S. ULRICH and
(s) EARL McGHEE
Their Attorneys. [193]

[Title of Court and Cause.]

COST BOND

Filed Nov. 13, 1935 at 2 o'clock and 30 minutes p. m.

WM. F. THOMPSON, JR.,
Clerk.

By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building,
Honolulu, Hawaii.
Attorneys for Appellants. [194]

KNOW ALL MEN BY THESE PRESENTS, That we, ROBERT K. MOOKINI and LEE SAU CHONG, as principals and GOO WAN HOY and JOSEPH E. LOPES, as sureties, all of Honolulu, City and County of Honolulu, Territory of Hawaii, are held and firmly bound unto the plaintiff in the above-entitled cause in the sum of Five Hundred ($500.00) Dollars, to be paid to the said plaintiff, for the payment of which well and truly we bind ourselves and our respective heirs, executors and administrators, jointly and severally by these presents.

The condition of this obligation is such that:

WHEREAS, the above-named Robert K. Mookini and Lee Sau Chong, two of the defendants above-named, have taken an appeal from the District Court of the United States in and for the District

of Hawaii, to the United States Circuit Court of Appeals for the Ninth Circuit, to review the verdict entered herein on the 28th day of May, 1935, and the judgment and sentence made and entered herein on the 29th day of June, 1935:

NOW, THEREFORE, if the above-named Robert K. Mookini and Lee Sau Chong shall prosecute their appeal with effect and shall answer all costs if they fail to make good their appeal, then this obligation shall be void; otherwise to remain in full force [195] and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at Honolulu, T. H., this the 13th day of October, 1935.

[Seal] (s) ROBERT K. MOOKINI
[Seal] (s) LEE SAU CHONG
Principals
[Seal] (s) GOO WAN HOY
[Seal] (s) JOS. E. LOPES
Sureties

Taken and acknowledged before me the day and year first above written.

[Seal] (s) WM. F. THOMPSON, JR.,
Clerk, United States District Court for the Territory of Hawaii.

Territory of Hawaii
City and County of Honolulu—ss.

GOO WAN HOY, and JOSEPH E. LOPES, being each first duly sworn, on oath depose and say: That they are resident freeholders of Honolulu,

City and County of Honolulu, *Territory, and* have assets and real property situated within the Territory of Hawaii and within said City and County subject to execution and that they are worth in real and personal property within the Territory of Hawaii more than double the amount of the penalty specified in said bond, over and above all their debts, liabilities and property exempt from execution.

(s) GOO WAN HOY
(s) JOS. E. LOPES

Subscribed and sworn to before me this the 13th day of October, 1935.

(s) WM. F. THOMPSON, JR.,
Clerk, United States District Court, Territory of Hawaii. [196]

[Title of Court and Cause.]

BILL OF EXCEPTIONS

Filed Dec. 21, 1935 at 10 o'clock and 35 minutes a. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Defendants-Appellants. [197]

Be it remembered that the above-entitled cause came on duly to be heard in the above-entitled court on the 3rd day of April, 1935, Honorable Seba C.

Huber, one of the Judges of said court, presiding, for hearing on the indictment in the above-entitled cause, and the plaintiff being represented by Willson C. Moore, assistant United States attorney, and the defendants Robert K. Mookini and Lee Sau Chong being present in court and represented by their counsel, Barry S. Ulrich and Earl R. McGhee, and thereupon the following proceedings were had and testimony taken:

EXCEPTION No. I.

Before submitting any plea or taking any other action in this cause, the defendants Robert K. Mookini and Lee Sau Chong, by their counsel, demurred to the indictment returned against them in the above-entitled cause, the demurrer of defendant Lee Sau Chong being on the following grounds, to-wit:

"1. That it affirmatively appears from the allegations thereof that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim." [198]

"2. That it is now impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to

be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"3. That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

"4. That facts are not stated in this Count of said Indictment showing the actual doing of acts or happening of facts showing the commission of a crime by this defendant.

"5. That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

"6. That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count.

"7. That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did

jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

"8. That there is a misjoinder of defendants.

"9. That it affirmatively appears from said indictment that there is an attempt to force persons to trial jointly to their prejudice without the pleading or showing of facts justifying any such joint charge or trial.

"10. That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

"11. That said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill. [199]

"12. That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear

therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

"13. That said Count of said Indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place for delivery.

"14. That it does not appear from the allegations of said Count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it affirmatively appearing that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery, said Count failing to indicate that such proper delivery was not made.

"15. That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

"16. That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code. (Section 35, C. C.).

"17. That said Count of said Indictment fails completely to state facts from which this

defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

"Defendant demurs to Count Two of said Indictment on the ground:

"1. That it affirmatively appears from the allegations thereof that the charges therein made are unconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim. [200]

"2. That it is impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"3. That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

"4. That facts are not stated in this Count of said Indictment showing the actual doing of acts or happening of facts showing the commission of a crime by this defendant.

"5. That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

"6. That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count.

"7. That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

"8. That there is a misjoinder of defendants.

"9. That it affirmatively appears from said indictment that there is an attempt to force persons to trial jointly to their prejudice without the pleading or showing of facts justifying any such joint charge or trial.

"10. That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to

get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

"11. That said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill. [201]

"12. That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

"13. That said Count of said Indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place for delivery.

"14. That it does not appear from the allegations of said Count that this defendant

was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it appearing affirmatively that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be a proper delivery, said Count failing to indicate that such proper delivery was not made.

"15. That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

"16. That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code (Section 35, C. C.).

"17. That said Count of said Indictment fails completely to state facts from which this defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

"Defendant demurs to said indictment on the further ground that in the two Counts thereof there are charged two totally separate and distinct crimes in no wise connected the one with the other.

"Defendant demurs on the further ground that there is a misjoinder of causes of action."

And the demurrer of Robert K. Mookini, defendant, being on the following grounds, to wit:

[202]

"1. That it affirmatively appears from the allegations contained in count I of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as defendants, did 'make and cause to be made' and 'present and cause to be presented' for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior.

"2. That it is impossible to ascertain from the first count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious and fraudulent claim and voucher, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"3. That it is impossible to ascertain from the allegations of said first count of said indictment how or in what manner this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

"4. That it does not appear from the allegations of said first count of said indictment that the camp director of the Schofield Camp of

the Civiljan Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment, was authorized by law to make payment or to approve the making of payment of said claim and voucher.

"5. That it affirmatively appears from the allegations of said first count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

"6. That there is a misjoinder of defendants in the first count of said indictment.

"7. That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice without pleading or showing facts justifying such joint charge or trial. [203]

"8. That said first count of said indictment is indefinite and uncertain and impossible for this defendant to plead to, in that it fails to give any statement or facts showing how or in what manner this defendant participated in making and presenting the alleged claim and voucher therein mentioned.

"9. That said first count of said indictment is indefinite and uncertain in that it fails to

show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher.

"10. That said first count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as charges which could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

"11. That said first count of said indictment, while charging that said goods 'were not delivered to said Civilian Conservation Camp at all', fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

"12. That it does not appear from said first count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

"13. That said first count of said indictment fails completely and wholly to show facts upon which this defendant can possibly know the

exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof.

"14. That it affirmatively appears from the allegations contained in count II of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as defendants, did 'make and cause to be made' and 'present and cause to be presented' for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior. [204]

"15. That it is impossible to ascertain from the second count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious and fraudulent claim and voucher, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"16. That it is impossible to ascertain from the allegations of said second count of said indictment how or in what manner this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

"17. That it does not appear from the allegations of said second count of said indictment that the camp director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment, was authorized by law to make payment or to approve the making of payment of said claim and voucher.

"18. That it affirmatively appears from the allegations of said second count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

"19. That there is a misjoinder of defendants in the second count of said indictment.

"20. That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice without pleading or showing facts justifying such joint charge or trial.

"21. That said second count of the said indictment *in* indefinite and uncertain and impossible for this defendant to plead to, in that it fails to give any statement or facts showing how or in what manner this defendant partici-

pated in making and presenting the alleged claim and voucher therein mentioned.

"22. That said second count of said indictment is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher. [205]

"23. That said second count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

"24. That said second count of said indictment, while charging that said goods 'were not delivered to said Civilian Conservation Camp at all,' fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

"25. That it does not appear from said second count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

"26. That said second count of said indictment fails completely and wholly to show facts upon which this defendant can possibly know the exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof."

which demurrers and each part thereof were overruled by the court, to which ruling of the court the defendants then and there duly excepted. (Tr. Page 6.)

EXCEPTION NO. II.

That thereafter and on, to-wit: the 22nd day of April, 1935, upon the further hearing of said cause, the defendant, Lee Sau Chong by his counsel, moved that his cause as defendant in the above-entitled matter be severed for the purpose of trial, upon the grounds that each of the defendants above-named were at the time of the happening of the events referred to in said indictment Government officials in the employ of the United States Government; that said Lee Sau Chong was never in the employ of said Government, and that evidence would be admissible as to said other defendants, as such Government officials, which would not be admissible as to said Lee Sau Chong, all to the prejudice of the rights of said Lee Sau Chong. [206]

Upon consideration of said motion by the court, the same was overruled, to which ruling the said Lee Sau Chong then and there duly excepted. (Tr. Page 29.).

EXCEPTION NO. III.

That thereafter and on, to-wit: the 13th day of May, 1935, the above-entitled cause came on duly for trial before the Honorable Seba C. Huber, one of the Judges of the above-entitled court, when a jury was empanelled and sworn, and the plaintiff being represented by its said counsel and the defendants being present in court and represented by their said counsel, upon cross-examination of William E. Miles, one of the above-named defendants, and who was not then upon trial, being called as a witness for the prosecution, counsel for defendants Mookini and Lee Chong offered to prove by said Witness Miles that said Miles had converted to his own use $240.00 belonging to the Civilian Conservation Corps camp fund at Schofield Barracks; that defendant Mookini learned of such conversion of said money; that said Miles thereupon sought to and did actually borrow $200.00 from defendant Lee Chong, which said money said Miles repaid to said fund and that as a consequence of such discovery by said Mookini of such conversion by said witness Miles, said Miles placed charges against said Mookini resulting in the dismissal of the latter from the Government service, which action on the part of said Miles showed a distinct reason for animus on the part of said Miles with respect to said Mookini; that said proof indicated the position of said Miles with respect to the transactions involved in the charges before the court and showed the reason that said Miles made charges against said Mookini,

and further that said offer of proof affected the credibility of said witness Miles and showed his interest and bias with respect to defendants Mookini and Lee Sau Chong. [207]

Upon consideration of said offer of proof, the court denied the same, whereupon defendants Mookini and Lee Sau Chong duly excepted. (Tr. Pages 118 to 122.)

EXCEPTION NO. IV.

That during the cross-examination of said witness Miles, and after said witness had testified that he had borrowed $200.00 from defendant Lee Sau Chong and given said Lee Sau Chong his promissory note therefor, counsel for defendants Mookini and Lee Sau Chong requested the court that it allow counsel to indicate by said witness the circumstances under which note was made, and thereupon offered to prove said circumstances by said witness Miles, whereupon the court refused to permit such proof, to which refusal the defendants then and there duly excepted. (Tr. Page 142.)

EXCEPTION NO. V.

That upon the direct examination of John E. Cunningham, one of the defendants above-named and who was not then and there on trial, but called as a witness for the prosecution, said Cunningham testified as to conversation had between himself and Lee Sau Chong about defendant Robert K. Mookini, which conversation was not in said Mookini's presence, the testimony being as follows:

"Q. What was the conversation to the best of your recollection?

"A. Lee Chong told me that Mookini wanted his home account added in to the C.C.C. account. I told him, 'I don't like the idea; you fooling around with Federal people and you've got to explain that one of these days'. 'Well,' he told me, 'You fix it up'; I says, 'No, you better wait a couple of days when I and him will come down here and you hand him the bill.' [208]

"Q. Did you and Mookini come down a couple of days later?

"A. Yes, we did come down there and Lee Chong handed him the bill.

"Q. Handed him what bill?

"A. His present bill for his home, around $34.00 and some off cents; and he said 'Will you and Jack fix that up?' I says, 'I'm not fixing nothing up'. So he says t'me, 'The're a lot of cooks looking for work and there are a lot of cooks willing to do as they are told; that's all I have to say; you meet me at the capital building'.

"Q. What did Mookini do then?

"A. He went up to the Capital Building there and I had to meet him afterwards.

"Q. After he left, did you have any further conversation with Lee Chong?

"A. Yes, sir.

"Q. What was that?

"A. I told Lee, 'This looks kind of funny——'

"Mr. ULRICH: If your Honor please, of course this has nothing to do with either of the charges in this case; I really don't mind it going to the jury but at this time for the purpose of a ruling, I move to strike out all of the witness' testimony as to this conversation. I object to the present question on the ground that it deals with matter not involved in the present issues, that it is merely an attempt to bring into the record something which did not even—it was not even suggested that it had reached a point of any crime; and I'll take the court's ruling.

"The COURT: The motion to strike is denied."

After consideration, the court overruled the said motion to strike to which ruling counsel for defendants duly excepted. (Tr. Page 152.)

EXCEPTION NO. VI.

That during the further examination of said witness Cunningham, said witness was permitted over the objection of counsel for the defendants, to testify that on or about June 4, 1934, the following conversation was had between the witness and said Robert K. Mookini:

"Mr. MOORE: Q. The next month's bill, did you have any conversation with Lee Chong or Mookini with reference to that? [209]

"A. Along about in May—in June, around the 4th of June, Mookini said to me: 'Did you

fix up my bill with Lee Chong?' I says, 'No.' 'Well', he says, 'You better if you know what's good for you.' So Lee fixed it up again and I signed it.

"Q. Do you know how much that bill was that was fixed up?

"A. Something around $72.00 I believe.

"Mr. ULRICH: Same objection. If your honor please; the question calling for matter having nothing to do with the indictment, endeavoring to prove a separate offense not charged in the indictment."

After consideration the court held that the evidence was admissible, overruled defendant's objection thereto, to which ruling said defendants then and there duly excepted. (Tr. Page 153.)

EXCEPTION NO. VII.

That during the further direct examination of said witness Cunningham, said witness was further permitted, over the objection of counsel for the defendants, to testify as follows:

"Q. Was there any other voucher besides this one for $34. and some off cents and the one for around $72.00?

"A. There was another one, then, for June; we ran that up, I believe, to——

"Mr. ULRICH: I object to that; we have another crime every day.

"The COURT: Same ruling.

"A. About $102.00 or $103.00, that voucher went up.

"Q. Did you have any conversation during this period with Mookini concerning this covering up?

"A. Yes sir, he asked me about that last voucher. He asked me about each one there; on the last voucher, he asked me, 'Did you fix that voucher up?' I says, 'No.' 'Well', he says, 'you better. You better get ready to go to town.' So that's how I came with him that day and we had it fixed up; and I said, 'That's the last voucher I'm fixing up.'

"Q. That is the $102.00 or $103.00?

"A. $102.00 or $103.00; I told him, 'I'm not fixing no more vouchers up.' [210]

"Q. After that was there any other vouchers that he asked you to fix up?

"Mr. ULRICH: Same objection.

"The COURT: Same ruling."

Whereupon exception to the admissibility of said testimony was duly taken by the defendants. (Tr. Page 154.)

EXCEPTION No. VIII.

That on the cross examination of witness John E. Cunningham, counsel for defendants offered to prove by said witness that said witness, about April or May, 1933, shot and killed a man; that said killing was inquired into by the Territorial Grand Jury

which did not return a true bill against said witness, which offer of proof the court refused and thereupon counsel for defendants then and there duly excepted, on the ground that said evidence would affect the credibility of said witness. (Tr. Page 164.)

EXCEPTION NO. IX.

That on the direct examination of Joseph I. Deville (referred to as Charles I. Deville in the Transcript), witness called for the prosecution, said witness was permitted to testify as to statements made and conversations had between witness and Lee Sau Chong with reference to certain alleged fictitious items listed on said vouchers known as United States Exhibits "D", "G" and "J", to which these defendants objected on the ground that such statements and conversations did not amount to confession of guilt and that they could not be received in evidence as admissions against interest and further that said witness could only testify as to such statements or conversations by way of rebuttal in impeachment of defendants. [211]

Upon consideration, the court overruled defendants' objection, to which ruling of the court defendants then and there duly excepted. (Tr. Page 259.)

EXCEPTION NO. X.

That at the close of the testimony for the prosecution and after the plaintiff had rested its case, defendants moved the court that it do enter an order

directing a verdict of "not guilty"; which motion the court thereupon, after consideration, overruled, to which action of the court in overruling said motion the defendants then and there duly excepted. (Tr. Page 278.)

EXCEPTION NO. XI.

That during said trial and upon the cross-examination of defendant Robert K. Mookini and over the objection of his counsel, the court permitted the plaintiff to examine said witness on a portion only of the testimony given by said witness before the Grand Jury which returned the indictment herein against said defendant Mookini, whereupon exception was duly taken to the ruling of the court in permitting such examination. (Tr. Page 484.)

EXCEPTION NO. XII.

That on said trial plaintiff produced and offered in evidence a transcript of the notes of testimony given by defendant Mookini before the Grand Jury which returned the indictment herein against said Mookini, to the introduction of which in evidence the defendant Mookini, by his counsel, objected on the ground that the plaintiff cannot properly contradict the witness by evidence theretofore taken from that witness in a prior proceeding except as to the extent that such testimony indicated prior contradictory statements; that such evidence could not be received as an admission against interest and that such evidence [212] given before said Grand Jury was not a confession of guilt.

The court, after consideration, overruled said objection and admitted in evidence said transcript of said testimony, to which action of the court the defendant Mookini then and there excepted. (Tr. Page 587.)

EXCEPTION NO. XIII.

That in the course of said trial and after both the plaintiff and defendant had rested and before the jury had retired from the bar to consider of its verdict, the plaintiff requested the court to give to the jury each of the following instructions, to-wit:

"Instruction No. 4.

"You are instructed that the Camp Director of the Civilian Conservation Corps is an officer in the civil service of the United States. You are further instructed that it appears from the evidence in this case that said Camp Director was charged with the duty of disbursing what is known as the mess fund, and there is further evidence that he also handled a canteen fund, the mess fund being a Government realization while the canteen fund belonged wholly to the members of the Civilian Conservation Corps, and said canteen fund was not a fund belonging to the Government of the United States."

"Instruction No. 5.

"You are instructed that the word 'fraud' means the intentional employment of any cunning, deception or artifice used to circumvent, cheat or deceive another."

"Instruction No. 9.

"You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime; and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts."

"Instruction No. 10.

"A reasonable doubt is not a fanciful doubt, but such a doubt raised by the evidence as a reasonable man can give a reason for. The law does not require that the government shall prove an accused guilty beyond all possible doubt, but the law does require the government shall prove each and every one of the material allegations of the indictment to your satisfaction and beyond all doubt that is reasonable, in other words, it must satisfy you as reasonable men of the guilt of the accused and satisfy you beyond a reasonable doubt. [213]

"You are the exclusive judges of the credibility of the witnesses and of the weight to be attached to their testimony, but the law you must take from the Court whether or not you, in your own minds, believe the Court to be

correct. To pass upon the law is the exclusive province of the Court, but to pass upon the facts and apply to such facts the law as given by the Court is the exclusive province of the jury, and in this connection I instruct you that, although the Judge legally may comment upon the facts and give his opinion, nevertheless that is the opinion of the Judge only and the final responsibility of deciding the facts rests with you.

"In determining the credibility of a witness you may take into consideration his interest, bias, prejudice, motives or feelings of revenge, if any, his manner of testifying, his demeanor on the witness stand and the probability or improbability of the story told by him, or any other thing which a reasonable man would consider in determining whether or not he believed a witness. If you believe that any witness has wilfully testified falsely or wilfully misled you as to any material fact in the case, you may disregard his entire testimony except such part as may be corroborated by other credible evidence, or believed by you to be true."

"Instruction No. 14.

"Gentlemen of the Jury, you are instructed that if you find and believe from the evidence beyond a reasonable doubt that the defendants named in this indictment, or any of them, agreed between themselves or conspired to-

gether to make, cause to be made, present or cause to be presented for approval or payment the vouchers covered by Counts I or II of the indictment, and that in pursuance thereof said vouchers, or either of them were so made, presented or caused to be presented with intent to defraud the United States Government or any department thereof, then I charge you that any act or declaration of such agreeing defendant or defendants in furtherance of said common purpose done or said by him or them in the absence of any other defendant is legal evidence in this case against each of the said agreeing defendants and may be considered by you in finding your verdict."

To the giving of said instructions, and each of them, the defendants objected, which objections the court overruled and gave said instructions to the jury, to which action of the court in giving each of said instructions the defendants then and there duly excepted. (Tr. Page 672.)

EXCEPTION NO. XIV.

That on said trial and after the plaintiff and defendants had rested their respective cases and before said jury had retired from the bar of the court to consider of its verdict, the [214] defendants requested the court to give to the jury each of the following instructions, to-wit:

"Instruction No. 4.

"You, gentlemen of the jury, are the sole and exclusive judges of the sufficiency of the evidence and of the credibility of the witnesses in this case, and in passing upon the credibility of such witnesses you have a right, and it is your duty, to take into consideration their prejudices, motives, feelings of revenge, the inducements held out to them to testify, or any other influences surrounding them which may have operated to induce them to testify in a particular way, if any such have been shown by the evidence in this case."

"Instruction No. 9.

"If you believe from the evidence that the certain items appearing in Counts I and II of said indictment herein were not actually delivered to said Civilian Conservation Camp, but do believe that other articles of equal value were delivered to said camp by said Lee Chong Company, then it is your duty to find the defendants not guilty."

"Instruction No. 13.

"I further instruct you that the purpose of the statute or law under which these defendants have been indicted and prosecuted is to prohibit and punish the drawing of money from the Treasury of the United States without having rendered legal and authorized equivalents therefor."

"Instruction No. 14.

"And I further instruct you that if you believe from the evidence that Defendant Mookini had no knowledge of the changes or alterations which were made in the Mother's Day bill until on or about September 13, 1934, and had no knowledge with respect to the changes or alterations which were made in the Labor Day bill until on or about October 5, 1934, then you will find this defendant not guilty."

which instructions the court refused to give, to which refusal of the court to give said instructions, the defendants at the time duly excepted. (Tr. Page 672.)

EXCEPTION NO. XV.

That on, to-wit: the 28th day of May, 1935, the said jury, sworn and empanelled in said cause, as to defendant Robert K. Mookini, returned a verdict of guilty as to Count One of said indictment returned against him in said cause, and as to defendant Lee Sau Chong, returned a verdict of guilty as to both Counts in [215] said indictment set forth, to which verdict the defendants did then and there duly except on the ground that said verdict was contrary to the law and the evidence and the weight of the evidence. (Tr. Page No. .....):

EXCEPTION NO. XVI.

That after said jury had returned its verdict, thereupon the defendants Robert K. Mookini and

Lee Sau Chong, by their said counsel, moved the court for a new trial on the following reasons filed in writing with said motion, to-wit:

"That defendant has suffered serious prejudice herein in the action of this Court in overruling defendant's demurrer to the indictment, wherein, among other things, it was claimed that it was impossible for said defendant to ascertain from said indictment in what manner it was claimed that he, together with three other defendants, had jointly participated in the making and presentment of fraudulent claims for payment, wherefore it was impossible for said defendant to properly prepare for trial.

"That this defendant suffered prejudice in that he was forced to trial without opportunity being given to acquire information vital to the preparation for trial as indicated in those paragraphs of the demurrer to the indictment herein showing how and in what respect said indictment was indefinite and uncertain and how and in what respects it was impossible to obtain information therefrom as to the nature of the crime charged against this defendant.

"That this defendant has suffered prejudice justifying and requiring that the verdict heretofore entered herein be vacated and set aside in that and because said verdict is wholly and completely unsupported by any evidence showing criminal intent on the part of this defendant."

"That the verdict of guilty against this defendant is directly contrary to the evidence in the case.

"That the verdict of guilty against this defendant is contrary to the law.

"That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes.

"That prejudice has been suffered and a new trial should be granted by reason of errors committed by the Judge on the trial of said cause in the reception of evidence offered by the United States and objected to by counsel for this defendant.

"That error was committed in the reception of evidence in this case of the testimony given by this defendant before the Grand Jury of the Territory of Hawaii, which transcript was received without any restriction upon its scope as evidence and as evidence against this defendant. [216]

"That error was committed by the Court in refusing to permit defendant to introduce evidence indicating the true relation of the Government's witness Miles to this defendant and to the other defendant in this case on the ground that to do so would be to permit a showing to be made of a commission of a crime by the said Miles, although said witness Miles

was not required to and did not claim any constitutional privilege against self-incrimination.

"That prejudice has been suffered by reason of the error committed by this court in refusing to give defendant's requested instructions Nos. Four, Nine, Thirteen and Fourteen.

"That prejudice has been suffered by reason of the error committed in giving over defendant's objections Government's Instructions Nos. Two, Four, Five, Nine, Ten and Fourteen.

"That prejudice has been suffered and the verdict herein should be set aside and a new trial granted by reason of the fact that after the taking of evidence in said cause had been closed and said case, after full argument and instructions to the jury, had finally been submitted to the jury for its deliberation and determination, without the knowledge of or notice to this defendant or his counsel, or anyone representing him, the Honorable S. C. Huber, presiding judge in said cause, in answer to an inquiry sent in from said jury, did make and send a certain statement of fact to said jury as to the number of men enrolled at the C. C. C. Camp, which fact as so stated did not appear in the evidence in the case and was based upon information acquired by said Judge entirely outside of the record of said case, which statement was in fact in conflict with evidence in the case, and which statement of fact made by said Judge to the jury without the knowledge

or approval of defendant as aforesaid, was considered by said jury and operated in the deliberations of said jury and in its effect toward inducing the verdict thereafter rendered against this defendant, to defendant's most serious prejudice.

"That prejudice was suffered by this defendant and error committed in the refusal of the Court to allow defendant's offer to prove with respect to the defendant and Government's witness, Cunningham, that said Cunningham had deliberately and wilfully shot and killed a defenseless, crippled, old man at Kailua on the Island of Oahu at a time shortly prior to the time that he took employment with the C. C. C. Camp at Schofield Barracks, Oahu.

"This defendant bases this, his motion for new trial further upon errors committed by this Honorable Court on said trial which may not now be specifically referred to by reason of the fact that the transcript of the proceedings had and evidence taken on said trial is not yet available and cannot be referred to, but by reference makes all acts and rulings of the Court heretofore excepted to on behalf of this defendant grounds for this motion for new trial."

In addition to basing his motion for new trial upon the foregoing grounds, upon which the motion of Robert K. Mookini for new trial was based, defendant Lee Sau Chong included the following grounds in his motion for new trial: [217]

"That defendant has suffered serious prejudice herein in the overruling and denial of his motion heretofore made herein for a severance and a trial separate from the other defendants in said cause and in being forced and compelled against his will and wish to stand trial herein together with one of the other defendants in said cause, to-wit: Robert K. Mookini.

"That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes and by said verdict has been found guilty of two crimes as the result of a single trial.

"That prejudice has been suffered and a new trial should be granted by reason of the denial by this Court of this defendant's Motion for Bill of Particulars, and in that defendant was forced to trial in the above-entitled cause without the information sought in said Bill of Particulars to his said defendant's prejudice."

But the court refused to grant said motion and gave judgment upon the verdict as rendered by the jury and did then and there impose sentence upon said defendants, to which ruling of the court in refusing to grant said motion, the defendants then and there duly excepted. (Tr. Page .....)

All pleadings and exhibits in said cause, the clerk's minutes, verdict, judgment and sentence, the reporter's transcript of testimony, and all proceed-

ings in said cause, are hereby referred to and made a part of this Bill of Exceptions.

WHEREFORE, said defendants, Robert K. Mookini and Lee Sau Chong, present this, their joint and several Bill of Exceptions and ask that the same be settled and allowed as true and correct.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG,
By BARRY S. ULRICH (s) E. M.
By (s) EARL R. McGHEE
Attorneys for Defendants-
Appellants [218]

The foregoing Bill of Exceptions, having been examined and found to be conformable to the truth, is hereby settled and allowed, this 27th day of September, 1935.

(s) S. C. HUBER
Judge, United States District
Court for the District and
Territory of Hawaii. [219]

[Title of Court and Cause.]

WITHDRAWAL OF COUNSEL.

Filed Feb. 5, 1936 at 3 o'clock and ..... minutes p.m. (s) Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building,
Honolulu, T. H.
Attorneys for Appellants. [220]

Comes now EARL R. McGHEE, one of the counsel of record for ROBERT K. MOOKINI, one of the Defendants above named, and hereby withdraws as counsel for said Defendant.

Dated at Honolulu, T. H., this the 3rd day of February, 1936.

(s) EARL R. McGHEE

The foregoing withdrawal of counsel is hereby noted, and ordered filed with the records in the above entitled case.

(s) S. C. HUBER
Judge, United States District Court for the District and Territory of Hawaii. [221]

[Title of Court and Cause.]

ORDER ALLOWING WITHDRAWAL OF ORIGINAL EXHIBITS.

For good cause shown, the Clerk of the United States District Court for the Territory of Hawaii is hereby authorized and ordered to docket and file with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, after briefs of the plaintiff and defendants on appeal herein have been filed in said court, original United States Exhibits "A" and "L" and original exhibits Nos. 3 and 6 for the defendants, entered and received as evidence in the

trial of the above entitled cause, upon the condition that they be returned to the said Clerk of the United States District Court upon the final termination of the appeal herein.

Dated: Honolulu, T. H., this 25th day of March, A. D. 1936.

(s) S. C. HUBER
Judge, United States District Court, Territory of Hawaii.

[222-223-224]

[Title of Court and Cause.]

TRANSCRIPT.

The above entitled matter came duly on for hearing on demurrers, before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 9:30 a. m. on Wednesday, April 3rd, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants Robert K. Mookini and Lee Sau Chong being present with their attorneys Earl R. McGhee, Esq., and Barry S. Ulrich, Esq., respectively; the defendant William E. Miles appearing with his attorney Fred Patterson, Esq., whereupon, the following proceedings were had:

The COURT: If agreeable to counsel, the Court would suggest that one of counsel for defendants open the argument, then let Mr. Moore reply, and then the other attorney close. [231]

Mr. PATTERSON: I think that would be satisfactory, Your Honor; I'll let Mr. McGhee handle the opening.

Mr. McGHEE: The defendant Mookini, Your Honor, has filed a demurrer, in which he has raised 13 distinct grounds on which he claims this indictment against him to be defective. The first count —Your Honor has a copy of the demurrer before him?

Mr. McGHEE: The first count says: (reading first count). It is the contention of this defendant that any count charging a person with having committed four separate and distinct acts inconsistent and repugnant with themselves or with each other is bad for duplicity. * * * It is the contention, however, of the defendant, that it is impossible for four men, acting jointly, to make, cause to be made, present and cause to be presented a false claim and voucher, impossible for four men to do those four acts either simultaneously or one after another * * * (argument continued).

Mr. MOORE: May it please the Court, this indictment is based upon Section 80, Title 18, of the United States Code, the first paragraph of which reads as follows: (reads) * * * Now, this indictment, in starting out, sets forth that these four defendants "did make and cause to be made, present and cause to be presented"—identical words of the statute are alleged in the conjunctive and not the disjunctive, which is the manner and form in which

Federal indictments have been presented from time immemorial. Then we have, what department of the Government were they presented to? (argument continued) * * * [232] We are here as an integral part of the United States of America, of which the Territory of Hawaii is a part; and when they endeavor to even infer that we are referring to a war department of the Territory of Hawaii, seems to me it's going right into the ridiculous and reaching for something based wholly upon imagination and not upon any logical reasoning or deduction. We submit that both demurrers, may it please the Court, should be overruled.

Mr. PATTERSON: I'll take only a few minutes, Your Honor. There are two serious things wrong with this indictment. I want to be fair with the Court. (argument) * * *

The COURT: Mr. PATTERSON, does the Court get you right in the thought that this indictment may be good as to Lee Sau Chong but not good as to the other defendants?

Mr. PATTERSON: The only possible way that this indictment can be good as to Lee Sau Chong is to say that on account of this being Lee Chong Company, that leaving the word "Sau" out of it, that he's part of it, but it doesn't say that he's part of Lee Chong Company * * * I don't see how Your Honor can go outside of the record and say that Lee Sau Chong is Lee Chong Company * * * If you take this properly, the Lee Sau Chong Com-

pany did something wrong, and they say these men knowingly presented this claim, when it's not mentioned in the indictment at all.

The COURT: As the Court reads the indictment, there is no offense charged against the Lee Chong Company as such, and it is not a party to this action.

When this demurrer was filed, the Court carefully examined the case of United States against Lono McCallum, [233] one of the last cases brought under this same Section in this court, a case in which a demurrer was interposed on much the same grounds, and the demurrer overruled. The Court also examined the case which has been referred to by counsel for both sides, the Bridgeman case; because the Bridgeman case is one in which the opinion is given by the Ninth Circuit Court of Appeals. In that case the Court uses this language:

> "It is a sufficient answer to the suggestion that there is no direct allegation of an intent to defraud the government to say that a willful attempt on the part of any person to obtain money from the government, based upon a false, fictitious, and fraudulent claim, the false and fraudulent character of which is known to him, necessarily imports an intent to defraud the government."

In the same case, in reference to the argument by Mr. McGhee as to making and causing to be

made, presenting and causing to be presented, representing four different things, the Court says:

> "It is clear, we think, that the making and presenting of a claim for money against the government are but different steps in the same act."

Then the Court states this test, which is the one that Mr. Patterson properly referred to:

> "If the facts alleged are such that, read in connection with the provisions of the statute applicable thereto, they clearly state all the essential elements of the offense, then the indictment is sufficient. When that is done the defendant [234] is necessarily apprised of what he is required to meet, and any judgment of acquittal or conviction under such an indictment will, of course, be a bar to any subsequent prosecution for the same offense."

The indictment must clearly set forth the acts which it is alleged constitute the offense.

Now, another case which the Court examined is the case of Summers against the United States, 11 Fed. 2nd 583, an opinion of the Eighth Circuit Court of Appeals. The opinion is written by my old friend Judge Watkins, who for so long represented Iowa in the United States Senate. In this case the Court says:

> "The general rule applicable to cases of this nature is thus stated in Potter against United

States: 'The offense charged is a statutory one, and, while it is doubtless true that it is not always sufficient to use simply the language of the statute in describing such an offense, yet if such language is, according to the natural import of the words, fully descriptive of the offense, then ordinarily it is sufficient.'. * * *

"There is no merit in the suggestion"——

and this covers another point——

"There is no merit in the suggestion as to the absence of the allegation that the United States marshal was clothed with the right to pay the claim, since the court must take judicial cognizance of the statute which devolves that duty on him." [235]

So in this case, the Court must take judicial notice of the authority of the two officials referred to in these two indictments as to their rights and duties under the statute. The making and presentation of the false certificate and of the false claim, whether for his own benefit or for the benefit of another, are both within the inhibitions of the statute.

It seems quite clear to the Court that, on the authority of the two cases cited, this demurrer should be overruled, and it is the judgment of the Court that it be overruled.

Mr. PATTERSON: May we have an exception, Your Honor?

Mr. McGHEE: And on behalf of Mr. Matson and defendant Mookini, I note an exception to the overruling of the demurrer.

The COURT: The exceptions will be allowed on behalf of all of these defendants. [236]

[Title of Court and Cause.]

The above entitled matter came duly on for hearing on a motion for a bill of particulars before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 10:15 a. m. on Monday, April 8th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants Robert K. Mookini and Lee Sau Chong being present, the defendant Robert K. Mookini being represented by his attorney Earl R. McGhee, and the defendant Lee Sau Chong unrepresented by counsel; defendant William E. Miles being present and represented by his counsel Fred Patterson, Esq.; whereupon, the following proceedings were had:

Mr. MOORE: In this case, may it please the Court, Mr. Earl R. McGhee appears for the defendant Robert K. Mookini, having filed a motion for a bill of particulars. There was some intimation of the filing of that motion last week when this was up for plea, and I have read the [237] motion for a bill of particulars, and I'm perfectly willing to submit it to the Court without argument.

Mr. PATTERSON: We're moving for a severance in this case, if Your Honor please. I spoke to Mr. McGhee—I hadn't spoken with him until just now—and I think he is willing to assure the Court on his investigation of it that Mr. Miles is entitled to a severance or vice versa. You have a motion for a bill of particulars?

Mr. McGHEE: Yes. If the Court please, I believe the subject is covered in the bill of particulars and pretty thoroughly argued last week on the demurrer. I am willing to submit it to the Court without any further argument unless the Court requests further argument.

The COURT: Inasmuch as a motion for a bill of particulars is directed to the sound discretion of the Court, and this is the first motion of the kind that has come before me, I would prefer that you would present your reasons.

Mr. McGHEE: Your Honor is aware that the indictment charges the defendant Mookini on two counts, with making and causing to be made, presenting and causing to be presented certain false and fictitious claims and vouchers. There are four distinct acts charged in each count, Your Honor, and it is impossible for four men to jointly make, cause to be made, present and cause to be presented one false claim and voucher. It is impossible, therefore, for this defendant to know with what act he is charged, what acts that are claimed by the United States government to constitute an offense under the section of the laws under which he is charged.

It is impossible for him to prepare for his defense—— [238]

Mr. MOORE: Let me interrupt just a minute. I want to get the plea as to Miles in this case, and then Mr. Patterson will be through, and I would suggest that the matter of the motion for severance be taken up when the various other defendants cases are at issue. What is your plea, Mr. Miles—guilty, or not guilty, to this indictment?

Mr. MILES: Not guilty.

The COURT: Let the plea of not guilty be entered as to the defendant Miles.

Mr. MOORE: May this motion that was filed for a severance on behalf of William E. Miles be taken up by this Court without prejudice because of the plea entered here today when the case is at issue as to all of the defendants.

The COURT: Yes; the Court will take it up at a time that is agreeable to you and counsel.

Mr. McGHEE: In the Shaffenburg case, with which, I believe, Your Honor is familiar, having read it last week, there is a distinction between the making and presentation of a claim, consequently it necessarily follows that there is a distinction between the making and presentation of a false and fictitious claim. This man is brought in here on a sort of a blanket charge and hasn't the least idea of what facts he may be confronted with in the matter of prosecution. If he made it, he can prepare his defense; if he is charged with having

made or caused it to be made, he can likewise prepare his defense; and likewise as to the other distinct offenses charged in count one and count two. We have no further argument, Your Honor, except that it's physically impossible for four men to make, cause to be made, present and cause to be presented a false and fictitious claim; [239] and I am willing to submit it to the Court on that as the ground alone.

Mr. MOORE: May it please the Court, the office of a bill of particulars, as I understand, is to furnish the defendant with information with which he can see what he is to meet and that he will not be taken by surprise in the case of trial. I had a number of citations with reference to a motion of this kind; a motion for a bill of particulars is one that is directed to the sound discretion of the court, and it is not the purpose of a bill of particulars to make a sort of fishing expedition out of it to find out what the Government's case is so that evidence may be produced to meet that. The purpose of a bill of particulars is where the indictment is of such an indefinite character as to not inform the defendant of the charge that is actually placed against him. * * * In almost every prosecution the facts and circumstances are given in evidence of which the charge in the indictment gives no notice. If a defendant is taken by surprise the court has ample power to protect him by granting a continuance upon a proper showing * * *. May it please the Court, in this particular case, as the records of

this Court will show, Mr. Robert Mookini, whom this indictment charges, appeared before the grand jury under a waiver of his constitutional rights; that at that meeting this case was discussed. This indictment further shows that the specific items of a certain voucher under a certain date were the ones which are claimed to be false and fraudulent; so that this defendant knows not only the particular voucher but he knows the specific items, which we contend is even one step further [240] than the Government would have to give him; and, further than that, this defendant was employed out there at the Civilian Conservation Corps, and he was for a time the man in charge of procuring food for the mess, and it is in that line of duty that it is contended by the United States Government that this fraudulent claim and voucher was presented. In other words, he is the man, you might say, right on the ground, that knows all about it; he knows what this charge is all about, he knows exactly what the items claimed to be fraudulent are; and the Government contends that his request at this time for a bill of particulars is, to say the least, nothing but a dilatory plea in the full sense of the word. This man knows exactly what he has to meet and what he's charged with, and this indictment sufficiently sets forth the charge so that either the plea of res adjudicata or autrefois acquit or autrefois convict could be successfully urged in the event that this Court either acquitted or convicted this defendant. There's no dispute, Your Honor, but what the

motion for a bill of particulars is addressed to the sound discretion of the Court, and that, except in the case of an abuse of that discretion, it is not reviewable by the appellate court. I submit the matter for Your Honor's discretion.

The COURT: In considering questions of this kind, it is exceedingly unfortunate that we do not have a more uniform criminal practice. The practice under which I served as public prosecutor for the first six years required that the names of all witnesses were to be endorsed upon the indictment, but not only that, abstract of the indictment was to be served upon the defendant at the time. That is not the Federal practice, and applies only in capital cases. [241] In capital cases it is necessary that that be done. This is not a capital case, however.

Now, the procedure of asking for a bill of particulars in a criminal case is comparable with that of a motion for a more specific statement or to make pleadings more definite and certain on the civil side; but there are certain principles that I think apply full well to both, and one which all courts recognize, that a party cannot ask to be furnished information which he himself has to the same extent as the opposite party. I did not know until the statement by the United States Attorney a moment ago that this defendant Mookini had appeared before the grand jury, which makes it seem quite probable that this indictment was returned, at least partially, on the testimony given

by him, which would show that *in least* that regard he himself was advised as to what these acts are.

Now, if this indictment in the first count did not contain the items found at the top of page two, the Court would feel that a bill of particulars setting out those items would be proper; but when it says that this account and claim was false in that it made a claim for 500 oysters $17.50, and 6 cases of apples billed, of which only two were delivered, thereby falsifying the claim to the extent of $10.20; 400 pounds of pumpkin at 4½¢ a pound, 400 pounds of fresh spinach at 4¢ a pound, 400 pounds of white squash at 5¢, a pound, 40 pounds fresh lima beans at 8¢ a pound; if this indictment did not contain those items, the Court would require the United States Attorney to set them out upon this application for a bill of particulars. But it is [242] difficult, in fact impossible, at this time for the Court to see how it could be made more specific when it says that this voucher is false, fraudulent and fictitious in that it makes claim for these items which are not correct, in one instance because a larger number are claimed to have been delivered than actually were delivered, and in another instance where none of the articles claimed were delivered.

Just what each of these four defendants had to do with this it is, of course, impossible to tell from this indictment. It may be that Lee Sau Chong first drew this bill and next Mookini O-K'd it and after he O-K'd it one of the other defendants O-K'd

it. So far as the indictment is concerned, it's quite immaterial whether one of these defendants or the other acted first; that would purely be a matter of evidence; and under the law it's just as important that the guilty be prosecuted successfully as it is that the innocent should be protected, and by that I mean that the Government is not required to disclose its evidence and thereby give the defendants undue advantages.

The matter of this indictment being duplicitous in charging four separate offenses was covered by the demurrer last week, and the Court is clearly of the opinion that it charges but one offense. As one of the cases that was relied upon in making that ruling said, that the making and presenting are but two different steps in the consummation of the same act; and whether the final proof would show the making or causing to be made, or presenting or causing to be presented, would be entirely immaterial, and the Court would be obliged to instruct the jury to that effect under [243] the law, because under the Federal statutes the causing to be made or causing to be presented is just as much a violation of Section 80 as is the making or presenting.

The Court feels that this indictment sufficiently advises the defendant of the nature of the charge made against him and from the information given in the indictment he should be able to properly prepare his defense. Therefore, the motion for a bill of particulars is denied.

Mr. MOORE: What is your plea, guilty, or not guilty?

Mr. MOOKINI: Not guilty.

The COURT: Let a plea of not guilty be entered as of this defendant.

Mr. MOORE: I suggest that this stand over until the case as to the other defendant is at issue, and that it may then be set down in 48 hours.

The COURT: Yes, the motion for severance should be disposed of before there is any attempt to set the case.

Mr. MOORE: I would suggest that this defendant Lee Sau Chong enter the plea the same as did the defendant Matson, with the same understanding.

The COURT: Yes; a plea of guilty can be withdrawn at any time; a plea of guilty doesn't prejudice the defendant's rights whatsoever.

Mr. MOORE: What is your plea, guilty, or not guilty?

Mr. LEE SAU CHONG: Not guilty.

Mr. MOORE: This defendant also pleads not guilty.

The COURT: Let a plea of not guilty be entered as to defendant Lee Sau Chong.

Mr. MOORE: Inasmuch as the defendants have all entered a [244] plea of not guilty, I suggest that it come up 9:30 Saturday morning for setting.

The COURT: In the meantime we dispose of this motion for severance?

Mr. MOORE: Yes, Your Honor.

The COURT: Will you please tell Mr. Ulrich as soon as he is able to appear here to notify the United States Attorney?

(Representative from Mr. Barry S. Ulrich's office): Yes. [245]

[Title of Court and Cause.]

The above entitled matter came duly on for hearing on a motion for a bill of particulars as to the defendant Lee Sau Chong, before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 2:40 p.m. on Wednesday, April 17th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini appearing by his counsel Earl R. McGhee; the defendant Lee Sau Chong appearing with his counsel Barry S. Ulrich, Esq.; whereupon the following proceedings were had:

Mr. MOORE: May it please the Court, after reading this motion for a bill of particulars, I believe it covers to a great extent the ground already covered, and, as *far the* United States Attorney's office is concerned, I am willing to submit the motion upon the argument heretofore presented on a similar motion in the same case.

Mr. ULRICH: If Your Honor please, not having been here [246] before, it would be impossible for me to submit the matter intelligently on the motion heretofore made. Your Honor has seen the motion?

The COURT: Yes.

Mr. ULRICH: (Argument) * * * I submit, Your Honor, that we're entitled to something further than the charges under which this indictment is presented. I submit it.

The COURT: Do you want to be heard at this time, Mr. Moore?

Mr. MOORE: Your Honor, as I stated when a motion for a bill of particulars was presented on behalf of two of these other defendants in this case, that we have set out exactly what this claim voucher is * * * (argument continued).

Mr. ULRICH: (argument) * * * May I just say this one further thing: I don't understand what harm can be done or why there should be any objection on the part of the prosecution to furnishing us with a statement of specific information to apprise us of what part we have played in the commission of a crime.

The COURT: Now, as the Court read the first count of this indictment, the offense is alleged to have taken place on the 7th day of June, 1934, and it alleges that these four defendants named did present and cause to be presented for approval and payment to the Camp Director—that would be of the "C. C. C."—"a fraudulent claim and voucher, dated May 12, 1934," in the sum of $231.00; and then it specifically sets out items amounting to $83.90 which it alleges were not delivered, in the manner in which the false claim says they were delivered; and, as the Court understands it, the Government would be limited to proof [247] as to

those items; no other items could be shown unless it was bearing solely upon the proof of these; that to sustain the allegations of the indictment the Government would have to show that all or at least a substantial portion of these items were not delivered as claimed by the vouchers presented: Now, if these several items amounting to $83.90 were not included in this indictment, the Court would feel that you were entitled to your bill of particulars without any question.

As to the second count of the indictment, certain items amounting to an aggregate of $72.50 of a total claim of $526.00 are claimed to be false and fraudulent, and they are alleged to have been presented on the 9th day of September, 1934, and, again, to the Camp Director of the C. C. C.

As referred to by Mr. Moore, Mr. Ulrich, the Circuit Court of Appeals of the Ninth Circuit, in the case of Bridgeman against United States, 140 Federal at 577, has passed upon an indictment brought under this section of the statute. And another case which the Court considered in connection with this matter is a more recent case; I believe it's from the Eighth Circuit Court of Appeals; it's the case of Summers against the United States, 11 Fed. 2nd, page 583.

I take it that the purpose of a bill of particulars is not to disclose the evidence of the Government; I think we would agree on that proposition, so no authority need be presented on that. This whole statute seems to denote intent to defraud the Gov-

ernment rather than the actual [248] defrauding, which are covered by other statutes; and on that point the Bridgeman case says it is sufficient answer to the suggestion that there is no direct allegation of intent to defraud the government to say that a wilful attempt on the part of any person to obtain money from the government based upon false, fictitious and fraudulent claims, the false and fraudulent character of which is known to him, necessarily imports an intent to defraud the Government; further, if the facts alleged are such that, read in connection with the provision of the statute applicable thereto they clearly state all the essential elements of the offense, then the indictment is sufficient; and citing certain cases in support of that proposition:

> "When this is done the defendant is necessarily apprised of what he is required to meet, and any judgment of acquittal or conviction under such an indictment will be a bar to any subsequent prosecution for the same offense."

The court then holds that the averments of an indictment, which is undoubtedly followed in framing this indictment, are sufficient.

Defendant's motion for a bill of particulars is overruled.

Mr. ULRICH: We except to the ruling of the Court.

The COURT: Let the exception be noted and allowed.

Mr. ULRICH: Now, if Your Honor please, at this time the next is a motion for severance. (Mr. Ulrich hands a document to Mr. Moore).

Mr. MOORE: This is the first time I have seen this. [249]

Mr. ULRICH: Yes, if Your Honor please, I have just finished it. I'll read it, if I may, to the Court. (Mr. Ulrich reads document)

Now, if Your Honor please, we recognize that a motion for severance is directed very largely to the discretion of the Court. We are coming before the Court at this time and seriously asking for something which we believe in fairness we should be allowed. We are showing the Court that our position is quite different from the position of the other defendants in this case . . . (argument continued).

Mr. MOORE: May it please the Court, the Court can see from the indictment itself this is a joint venture. There are four people connected with it; and with reference to a joint venture, of course, various parties to it do various things, but in a joint venture, of course, it is perfectly proper, perfectly permissible, and instructions have been given in this Court heretofore and in courts all over the country to the effect that where there is a joint venture, the acts of one are the acts of all . . . (argument continued). I have just received this motion for severance, and if the Court wishes to have some authorities or anything of that kind on it I would be glad to furnish any that the Court desires.

Mr. ULRICH: If Your Honor please, I have just been informed that there is pending before Your Honor now another motion for severance; I haven't known of that.

The COURT: Yes, that is true; there is such a motion that hasn't been submitted.

Mr. MOORE: It's something, I believe, to come up Saturday morning. [250]

Mr. ULRICH: I should imagine it would be premature to determine——

The COURT: Yes, the Court was going to announce that he would take this under advisement until the other was argued.

Mr. ULRICH: If Your Honor please, may I reply to what has been said by counsel for the Government. (argument)

The COURT: The Court quite agrees with Mr. Ulrich that the mere fact that it might require an additional trial or so is not to be considered as against the rights of any of these defendants that would be otherwise prejudiced. However, I am equally free to say that the mere fact that certain of the defendants were government officials, and you do not know, if otherwise jointly connected, shall not make any difference as far as the trial of the case is concerned, but would make considerable difference as to what punishment might be meted out in the event they were found guilty. Now, in the case of another defendant who has applied for a separate trial, he sets out that certain admissions were made by some of these defendants involving

him that were not made in his presence and hearing, and that to have those admissions go to a jury would naturally be prejudicial. That seems to be a point that's well taken. Is there any such claim in your case, Mr. Ulrich?

Mr. ULRICH: That's the fact, if Your Honor please. I must be frank to say to the Court that my knowledge of the facts of this case is probably much less complete than that of other counsel who have had the benefit of events over a period of weeks . . . (argument continued) [251]

The COURT: There's one thing impresses me favorably in regard to your defendant, Mr. Ulrich, and that is, while he protests strongly his innocence just as the others do, he does not do as they do, he does not say that while he's innocent the other fellows are guilty. As a matter of human fairness, I'd say that's in his favor. Mr. Moore, it has been definitely arranged to take the other motion up Saturday?

Mr. MOORE: Yes, Your Honor.

The COURT: Then I would suggest that we continue further hearing on this motion until that time. If you wish to make any amendment in the meantime, Mr. Ulrich, do so.

Mr. ULRICH: Thank you, Your Honor.

The COURT: And if you have any authorities you would like to have the Court consider, just hand the memorandum to me and to Mr. Moore.

(Adjourned—3:12 p. m.) [252]

[Title of Court and Cause.]

The above entitled matter came duly on for hearing on motions for severance as to the defendants Lee Sau Chong and William E. Miles, before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 10:00 a. m. on Saturday, April 20th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini appearing by his counsel Earl R. McGhee, Esq; the defendant Lee Sau Chong appearing with his counsel Barry S. Ulrich, Esq; the defendant William E. Miles appearing by his counsel Fred Patterson, Esq.; whereupon the following proceedings were had:

Mr. ULRICH: May I make this statement to the Court, if Your Honor pleases. Prior to the filing of my motion, Mr. Fred Patterson had already filed a motion the contents of which I saw only after the last hearing in this case, in which he asked for severance from the other two defendants on the ground of prior prejudicial statements which would not be available in the event of the trial of his client [253] alone. My motion was based on another ground, seeking a severance on behalf of my client from the two other defendants Mookini and Miles, making no claim of such statements—I mean, not based on the ground of prejudicial prior statements or admissions. Apparently I am faced with this dilemma; I must either join in the allegations of the prior prejudicial statements and throw myself with Mr. Patterson, which I don't believe I could do on

the affidavit which he has furnished, or rest my motion on the ground heretofore made, claiming a divergence of interest and evidence as to the other two defendants which would not be available as against my client. After considering the matter, I have preferred to rely on my motion as originally presented. As a matter of fact, I could not make a statement of prior statements as to my client, to be perfectly frank with the Court, of the same nature as Mr. Patterson alleges with respect to his client. I don't believe there's much in this evidence to present on behalf of either defendant to throw the guilt or blame on Mr. Lee Chong, as is alleged; and for various reasons I rely upon my prior motion.

Mr. MOORE: May it please the Court, we have filed this morning objection to the motion insofar as the severance for Lee Sau Chong is concerned, because we believe, may it please the Court, that, especially as to the two defendants Robert Mookini and Lee Sau Chong, that their preparation of these various vouchers that were presented for approval and payment to the Camp Director out there, that they were so intertwined and interrelated and each having to do with practically all steps connected with them, or so nearly so [254] that it would be an absolute duplication of the evidence as to both defendants; in other words, the same identical evidence would be admissible in the one case and it would be admissible to the other in the other case in the event it was severed; so that we see with reference to these particular two defendants that their cases ought to be tried together.

Mr. PATTERSON: Which two defendants, Mr. Moore?

Mr. MOORE: That's the case of Robert Mookini and Lee Sau Chong. Of course, there has been a severance by virtue of the plea already in the case of John E. Cunningham, and that of course is not the question here before the Court this morning.

Now, with reference to the defendant Miles, there is some evidence that would be conflicting as to the second count, that is, with reference to the voucher dated September 1st, when there was quite a row out there at the Schofield camp, as I understand it, between Lee Sau Chong and William E. Miles, where there were various claims made back and forth; so that, with reference to the defendant Miles we have not filed any objection to the severance; and we submit Lee Sau Chong and Robert Mookini should be tried together.

The COURT: Mr. Patterson, do you want to be heard?

Mr. PATTERSON: Well, there's been no objection to my motion, Your Honor; I think it was well taken; I think we're all agreed that as to Mr. Miles there should be a severance as far as he is concerned.

The COURT: Mr. Miles is ready to go to trial, is he?

Mr. PATTERSON: Is that up this morning, Your Honor? [255]

The COURT: But the one thing the authorities are unanimous on is that when a defendant asks for a separate trial he should be tried first and as soon

as possible, so that his evidence would afterwards be available for his co-defendants or the Government, as the case may be.

Mr. PATTERSON: (argument).

The COURT: The Court would be very reluctant to force any two or more of these defendants to go to trial together if it was to prejudice the rights of either. It is not claimed, Mr. Ulrich, on behalf of your client, I understand, that there is any serious antagonism between your client and the co-defendants?

Mr. ULRICH: It is not claimed that there is any serious antagonism between my client and Mr. Mookini. From remarks made by Mr. Patterson and the prosecutor's office this morning, however, it appears that there may be some antagonism between my client and Mr. Miles, reference made to the controversy at the Camp; I didn't even know that there was such a controversy.

(Further argument between counsel)

The COURT: The Court at this time has no knowledge of what the evidence before the grand jury was or what the evidence that would be presented on the trial is. The affidavit filed by the United States Attorney in opposition to this motion indicates that there was no such evidence, as I understand the affidavit; am I right in that, Mr. Moore?

Mr. MOORE: You are right in this respect, that there has been no statements made which would be prejudicial to the rights of Lee Sau Chong. Any ad-

missions that have been [256] made have not been made to the effect that Lee Sau Chong had anything to do with these vouchers or that he knew that they were false and fraudulent. There have been statements made, but not regarding Lee Sau Chong in connection with that.

Mr. ULRICH: That was the reason, Your Honor, that I was unwilling to join in the ground suggested to me as to prior prejudicial statements. I have to rest my motion for complete severance entirely on what I presented to the Court before, that there should not be a severance except from Mr. Patterson on his own allegations of antagonism.

The COURT: That antagonism, as I understand it, exists only between Mookini and Miles and in no way involves Lee Sau Chong; is the Court correct in that statement?

Mr. PATTERSON: Well, I believe that Miles is antagonistic only to two of them, Your Honor; I'm satisfied that he's antagonistic to both Mr. Ulrich's client and Mr. McGhee's client, perhaps more toward Mr. McGhee's client than he is toward Mr. Ulrich's client. I wouldn't like to state definitely just what that was, but I'm satisfied from such investigation of the case as I have made that there is a conflict of interest between Miles and Mookini and Miles and Lee Sau Chong.

The COURT: Before passing upon this motion the Court would like to examine more fully the pleadings that have been filed as to these several motions. (The Court glances through a file of papers

handed him by the Clerk). The Court will take the matter under advisement and, in all probability, rule Monday afternoon. You'll be advised in the event he does, however. I'm going to keep this file, Mr. Clerk. [257]

[Title of Court and Cause.]

The above entitled matter came duly on for a ruling, by the Honorable Seba C. Huber, one of the Judges of the above entitled Court, on motions for severance, at 2:15 p. m. on Monday, April 22nd, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini appearing by his counsel Earl R. McGhee, Esq; the defendant Lee Sau Chong appearing with his counsel Barry S. Ulrich, Esq.; the defendant William E. Miles appearing by his counsel Fred Patterson, Esq.; whereupon the following proceedings were had:

The COURT: At the last hearing of this matter all of the counsel seemed to be rather agreed on the one point, that the defendant Miles should be severed from the other defendants. That, however, would not justify the Court in making such an order unless Miles' application showed in itself sufficient grounds. And the Court, after studying that application, is of the opinion that it contains two [258] grounds either of which would be sufficient to warrant a severance; and it is the order of the Court that the defendant William E. Miles' application for a separate trial be granted, and that he be tried separate and apart from the co-defendants.

Now as to the application of Lee Sau Chong. He bases his request for a severance on quite different grounds, principally that the co-defendants are or have been officers of the Government, while he is merely a civilian. As previously intimated by the Court, that does not seem to be a sufficient ground to warrant a severance. In the affidavit of Mr. Moore—upon which in cases like this the Court must largely rely, since he is in position to know not only who the witnesses are but what their evidence will be, having presented this case to the grand jury and heard the evidence that was produced before that body—in his affidavit Mr. Moore states that there are no admissions or confessions involving other defendants which would prejudice the defendant Lee Sau Chong; and he also states in his affidavit that the facts in support of the allegations of the indictment are of a joint nature and so closely interrelated that they, insofar as Lee Sau Chong is concerned, should be tried together, that is, with Mookini. Defendant Lee Sau Chong's application for a separate trial is denied.

Mr. ULRICH: We will note an exception, Your Honor.

The COURT: Let the exception be noted and granted.

Mr. MOORE: May it please the Court, Mr. Stainback is to try these cases of these three defendants, and he is [259] now engaged in a jury trial in the Circuit Court; and I would suggest, may it please the Court, that this matter stand over until Friday at two o'clock for the purpose of setting.

The COURT: That will be agreeable to the Court if it is to counsel.

Mr. ULRICH: That's agreeable.

Mr. PATTERSON: All right.

Mr. McGHEE: Yes.

The COURT: Two o'clock Friday these cases will come up for setting. [260]

[Title of Court and Cause.]

The above entitled matter came duly on for trial before the Honorable Seba C. Huber, one of the Judges of the above entitled court, at 9:00 a. m. on Monday, May 13th, 1935; the Plaintiff being represented by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini being present and represented by his counsel Earl R. McGhee; the defendant Lee Sau Chong being present and represented by his counsel Barry S. Ulrich; whereupon, the following proceedings were had and testimony adduced:

The COURT: Is the Government ready?

Mr. MOORE: Yes, Your Honor.

The COURT: Mr. Ulrich, are you ready?

Mr. ULRICH: Ready, Your Honor.

The COURT: Mr. McGhee?

Mr. McGHEE: Ready, Your Honor. [261]

The COURT: You will proceed to draw a jury for this case. Gentlemen, as your names are called you will take a seat in the jury box.

Mr. ULRICH: If Your Honor please, heretofore I have appeared only for the defendant Lee Sau Chong, and at this time I would like to have the record show that I appear also for the defendant Robert Mookini, and that I represent both defendants.

Mr. McGHEE: And I represent the defendant Mookini.

Mr. ULRICH: Oh yes, and Mr. McGhee is still attorney for defendant Mookini.

(After the drawing of the tentative jury panel, all prospective jurors in the courtroom were sworn).

The COURT: Gentlemen of the jury, the law endeavors to select jurors who are absolutely impartial, and in an effort to obtain such a jury at this time certain questions will be propounded to you by the Court and then by counsel for the respective parties. The questions will be addressed to you as a whole.

This case is one in which an indictment has been returned against Mookini and Lee Sau Chong, the two men at the extreme right of the trial table, between their counsel Mr. Ulrich and Mr. McGhee. They, together with another defendant not now on trial, have been charged with making, causing to be made, presenting and causing to be presented certain false vouchers to an officer of the United States.

Have any of you heard anything about this case, that is, any purported statement of fact by any interested party or one assuming to know what the facts are that could [262] by any possibility affect

your judgment in this matter? If you have heard such facts or statements, please indicate it by raising your hand. Mr. Stainback, the United States Attorney for this district, Mr. Moore, or any others of his department, Mr. Ulrich, or Mr. McGhee, any of these attorneys for any of you gentlemen in any matter that you now have pending? If any of these are your attorneys, please designate.

Mr. DAMON: Mr. Ulrich is attorney for the Bishop Trust Company in a case in which we're interested.

The COURT: Not your personal attorney?

Mr. DAMON: No sir.

The COURT: Would you feel that such employment could in any way influence you as a juror in this case?

Mr. DAMON: It would not.

The COURT: Is there any other juror who has employed or has any connection with any of the attorneys that have been mentioned by the Court?

Would the fact that one of these two defendants is a Hawaiian and the other a Chinese in any way influence the conduct of any of you jurors either favorably or unfavorably to these defendants? If so, designate that by raising your hand.

Do any of you have any business connections or association with Lee Sau Chong or the company by whom he is employed?

Do any of you know of any reason whatsoever why if accepted as jurors to try this cause you could not render a true verdict according to the law and

the evidence. If anything occurs to you that might in any way influence you either favorably or unfavorably to either of these defendants, please designate so that the matter can be properly [263] inquired into.

The COURT (continuing): In this case, gentlemen of the jury, the Court will instruct you as a matter of law that these defendants and each of them are presumed to be innocent until they are satisfactorily proven to be guilty by the evidence presented by the Government; that this evidence when presented must convince you beyond all reasonable doubt; and that you are to give to each witness and to all testimony presented the full credit that it is entitled to under the law in the manner in which you will be instructed. Are you willing to accept such law to be the law of this case and conduct yourselves as jurors accordingly? If you have any doubt about your ability to do so, please designate by raising your hands.

Mr. Moore, you may proceed to make such further examination as you care to.

Mr. MOORE: Gentlemen, this case is one that grows out of the operation of the Civilian Conservation Corps camp, or what is commonly known as the "C. C. C.", at Schofield Barracks. The indictment returned charges four defendants with the crime as His Honor has stated; those four defendants were William E. Miles, John E. Cunningham, Robert K. Mookini, and Lee Sau Chong. There is one defendant, John E. Cunningham, who has already plead guilty. There has been a severance granted in this case as to the defendant William E. Miles; and these

two defendants, that is, Lee Sau Chong and Robert Mookini, are before you on trial this morning.

Now, in the event that William E. Miles is called as a witness in this case on behalf of the Government, would [264] that prejudice you either against these defendants or for these defendants? In other words, would that make any difference to you gentlemen?

Mr. MOORE (continuing): Now, do any of you gentlemen know either Mr. Ulrich or Mr. McGhee to the extent that you visit at their homes and they visit at your homes? Mr. Jefferson, which one is it?

Mr. JEFFERSON: I know Mr. Ulrich.

Q. Do you visit at his home?

A. I have, a number of years ago.

Q. Is there anything in your acquaintance with Mr. Ulrich, Mr. Jefferson, that would embarrass you in any way in sitting in this case?

A. Not in the slightest.

Q. And you feel, Mr. Jefferson, that if the Government shows you by evidence here that convinces you beyond a reasonable doubt of the guilt of these defendants or either of them, the mere fact that you are friendly with Mr. Ulrich would make no difference whatsoever?

A. Not in the slightest.

Q. And if chosen as a juror you would do your utmost, Mr. Jefferson, to cast aside any friendship that you have for Mr. Ulrich and render a fair and just verdict in this case?

A. would.

Q. And if chosen in this case you would be fair to the Government and fair to these defendants?

A. I should, yes.

Q. Any of you other gentlemen know Mr. Ulrich or Mr. McGhee [265] to such an extent or well enough so that it would embarrass you to sit as jurors in this case and you feel you couldn't be fair?

Q. Are there any gentlemen that dislike either Mr. McGhee or Mr. Ulrich so that it might prejudice the people they represent?

Mr. MOORE (continuing): Now, gentlemen, a few months ago there were several articles in the papers that purported to give some of the facts in this case. Did any of you gentlemen read any articles about the C. C. C. Camp at Schofield? Those of you gentlemen that have read those newspaper articles purporting to show or give facts concerning them, did the reading of those articles cause you to form any opinion in this case whatsoever as to the guilt or innocence of these defendants?

Q. Now, do you gentlemen feel that you are in such a frame of mind that if you were charged as defendants in this indictment instead of those that are now before the Court, that you would feel perfectly satisfied to have 12 men in the same frame of mind that you are try you in your case?

Q. Do any of you gentlemen know of any reason whatsoever why you cannot sit here as fair and impartial jurors both for these defendants and for the Government?

Mr. MOORE: Pass the jury for cause.

Mr. ULRICH: Mr. May, I understand that you know nothing at all about this case except what you've heard here this morning?

Mr. MAY: No.

Q. You know nothing of the parties—or do you; either Mr. Mookini, sitting there, or Mr. Lee Sau Chong? [266]

A. I know of him; I know Mookini.

Q. Do you know a Mr. Miles?

A. I know of him.

Q. Do you know him personally?

A. No.

Q. If he were to testify in this—by the way, he's under indictment, he turned state's evidence, he has some sort of a deal with the Government——

Mr. MOORE: I object to that, may it please the Court, and ask that it be stricken. The man is under subpoena before this Court; any statement as to any "deals" I think is highly prejudicial and not within the issues here.

Mr. ULRICH: I withdraw the word "deal"; I think the inference is a proper inference there must be some arrangement before the man takes the stand as a witness for the Government.

Mr. MOORE: I object to that, may it please the Court, or any statement that there is any "deal" or anything like that at all with the United States Government. The man is under subpoena; if he wants to testify, he can; if he don't, he can go under his constitutional rights.

Mr. ULRICH: Change the word "deal" to "arrange" for his testimony.

Mr. MOORE: I'll submit the objection, Your Honor.

The COURT: It appears to the Court that, until there is some evidence warranting such an inference, it would be well not to comment on it.

Mr. ULRICH: Very well, Your Honor.

Q. If Mr. Miles testifies in this case, would that fact have any influence one way or another upon your weighing of his testimony?

A. No. [267]

Q. Do you know a man by the name of John Edward Cunningham?

A. Personally, no; I have seen him; I have just heard of him.

Q. He's one of the defendants in this case; if he turns state's evidence and testifies, having pleaded guilty, would you give to his testimony just that measure of credence that you felt it was entitled to under all of the circumstances?

A. I would.

Q. Do you know anything about this Conservation Camp or any of the workings of it; have you had anything to do with it at all?

A. Nothing whatsoever.

Q. Do you know a man named Matson?

A. I know him by sight.

Q. You know who he is; he was connected with the Camp. You understood from the Court's state-

ment to you that these defendants are presumed to be innocent?

A. Yes.

Q. You would give him the benefit of that presumption, would you; that is, we have you assurance that you will only find him guilty when they have been so proved?

A. Yes.

Q. And not only that, but you understand this has to be beyond any reasonable doubt?

A. Yes.

Q. We have your personal assurance that you'll give us the benefit of that doubt throughout the case?

A. Yes.

Q. Mr. Jefferson, you know nothing about the case except what you've heard here this morning?

A. No. [268]

Q. You feel that you could approach it with a perfectly clear mind and give the defendants an even break, and that all we want is a square deal, and also the Government, to give them the benefit of whatever they might be entitled to?

A. Yes.

Q. This casual acquaintance that you had with me some weeks ago is not likely to lead you to lean over in my favor or anything of that kind?

A. No.

Q. It's not going to prejudice you one way or another?

A. No.

Q. Mr. Damon, I take it you'll be perfectly fair if sworn in this case; the fact that I represent your Company in a different matter would have no effect on you whatever?

A. No.

Q. Mr. Chong, do you know Lee Sau Chong?

A. Yes, I do.

Q. That's not a family name—Chong?

A. No.

Q. The family name comes at the other end?

A. The family name is Lee Chong.

Q. Are you related to Lee Chong?

A. I think his name is Mr. Lee.

Q. You are employed by C. Q. Yee Hop?

A. Yes.

Q. You have a sort of a rival business against Mr. Lee Chong?

A. Yes.

Q. Do you feel that would influence you in any way against him?

A. No sir.

Q. You think not?

A. No. [269]

Q. The fact that you have a similar line of business would have no influence?

A. No.

Q. You don't know him personally, or do you?

A. No.

Q. Anything in the acquaintance that would prejudice you either one way or the other, for or against?

A. No.

Q. You would give him a fair trial if you're admitted as a juror?

A. Yes.

Q. You would require that he would be proven guilty to your satisfaction and upon that proof you would render a verdict of guilty?

A. Yes.

Q. You would require that they prove that a crime was knowingly committed in this case, is that right?

A. Yes.

Q. Mr. Morley, do you know these two defendants?

A. I have spoken once or twice to Mr. Lee Chong.

Q. Mr. Lee Sau Chong, I believe, is his full name. Have you sold goods to him?

A. No sir.

Q. I take it there's nothing in that contract that would prevent you from being a fair juror in this case?

A. No.

Q. And you'll be that if sworn as a juror?

A. Yes.

Q. Mr. Leithead, do you know anything about this case at all?

A. Nothing whatsoever.

Q. What is your business connection? [270]

A. I am with American Factors.

Q. Do you know either Mr. Lee Chong or Mr. Mookini?

A. I know them by sight.

Q. Do you know Mr. Miles?

A. I do.

Q. Is he a friend of yours?

A. No.

Q. What is the character of the acquaintance?

A. Oh, I have just known him about 30 years; we say "Hello" to each other.

Q. Have you visited his home?

A. No.

Q. Or he at yours?

A. No.

Q. Do you know Mr. Cunningham?

A. I have known John Cunningham for about 25 years.

Q. Did you ever visit at his home?

A. I think I did, in a business way.

Q. Have you had any business connections with him recently?

A. He came down and applied for a position.

Q. Applied for a position with you?

A. Yes.

Q. Are you seriously considering his application?

A. I told him he had better get through with this trouble before he applied for a position anywhere.

Q. Seriously, do you feel you couldn't fairly weigh any testimony he might give, by reason of the acquaintance of long standing that you've had with this man?

A. No.

Q. Your inclination would be, I take it, to help him if you could, or would it?

A. Not on the trial in this case.

Q. I mean, generally?

A. No.

Q. What about Miles; is there anything in your acquaintance of long standing with him that would make it embarrassing? [271]

A. No; I haven't seen him for months.

(Similar questions asked of Mr. Frederick Lamb, who was later excused)

Q. Mr. Moore (Robert J.), do you know anything of the people that I have been talking about here, either of the defendants or Mr. Miles or Mr. Cunningham?

Q. I know Mr. Cunningham slightly.

Q. How do you happen to know him?

A. Oh, just through some trouble he had before.

Q. You didn't have any contact with that episode, did you; I mean, there's nothing that brought you personally in contact with him in connection with that?

A. No.

Q. Do you know Mr. Miles?

A. No.

Q. Do you know of any reason why you couldn't, if sworn as a juror, give a fair verdict?

A. No.

(Similar questions asked of Mr. Peter M. Neilsen, who was later excused)

Q. Mr. Alderman (Hubert P.), do you know anything about this case?

A. No sir; I only heard it this morning.

Q. Know any of these people here at all?

A. None of them.

Q. By the way, does Mr. Moore (Willson C.) or Mr. Ingram Stainback have—have any of them acted for you as counsel or attorneys at law at any time; I think the question was asked whether you had any pending business with any one here at all; neither Mr. Moore nor Mr. Stainback have acted as your attorney?

A. No. [272]

Q. Anyone else?

A. No.

Q. And the question was asked generally of the jury by opposing counsel, are any of you so well acquainted with either Mr. Stainback or Mr. Moore that you visit socially at their homes or have visited socially, or they in yours?

A. No.

Q. I take it that you don't know of any reason why you couldn't be a perfectly fair juror?

A. No.

Q. We have your sworn statement that if sworn as a juror you will be that fair?

A. Absolutely.

Q. Mr. Neff (Walter H.), do you know anything of the case?

A. Not except what I heard this morning.

Q. Do you know Mr. Miles?

A. Yes.

Q. How well do you know Mr. Miles?

A. I have known him for a number of years, but there's nothing personal about it.

Q. What has been your contact with him?

A. I have known him in the Army.

Q. You were in the Army together?

A. Yes.

Q. Did you leave the Territory; did your unit leave the Territory?

A. No.

Q. Well, how close to him were you in the Army —over him, under him, or alongside of him?

A. Under him; he was commanding officer in my company.

Q. He was commanding officer of your company?

A. Yes.

Q. That might or might not have been over you. Do you feel that, by reason of that contact, nothing occurred which [273] left you in such a frame of mind that you would be inclined to either favor or refrain from favoring any evidence that might be given by him in this case?

A. No.

Q. You think that you could listen to his testimony and then to testimony of another witness directly contradicting everything he said and give each witness exactly the same attention and consideration so far as the various testimony is concerned?

A. Yes.

Q. Do you know Mr. Cunningham?

A. Not personally.

Q. You just know who he is?

A. I just know who he is.

Q. Never met him?

A. I have seen him at times at Leahi Home.

Q. Do you know of any reason at all—and by that I mean, do you know of any reason why it would be embarrassing for you to act as a juror?

A. No.

Q. Mr. Toomey, do you know any of these people here?

A. No.

Q. Do you know Cunningham?

A. No.

Q. Or Miles?

A. No.

Q. Do you know anything about the case at all except what you've heard here this morning?

A. No.

Q. Would the fact that an indictment has been found against the defendant, or these defendants, incline you to feel that there was any presumption of guilt or anything at all [274] that arose from that fact?

A. Innocent until they're proved guilty.

Q. Innocent until they are proved guilty, and the indictment means nothing so far as the trial in this case is concerned?

A. Yes.

Q. And if sworn as a juror in this case you'll give them the benefit of every reasonable doubt throughout the trial of this case, is that right?

A. Yes.

Q. If instructed so to do, and you'll be so instructed by the Court?

A. Yes.

Mr. ULRICH: We pass the jury for cause.

The COURT: The defendants will have 10, and the Government 6 peremptory challenges. It is the Government's first peremptory.

(Mr. Chong was excused by the Plaintiff; Frank E. Fiske drawn as a prospective juror, questioned and passed, and later excused by defendants)

(Mr. Leithead was excused by the defendants; James A. Malloy drawn as a juror, and questioned as follows)

Mr. MOORE: Mr. Malloy, you heard the questions the Court asked these other members of the jury?

A. Yes.

Q. And you heard the questions I asked?

A. Yes.

Q. If the same questions were asked you, would your answers be in substance the same?

A. Yes.

Q. You don't know of any reason why you couldn't sit as [275] a fair and impartial juror here?

A. No.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Malloy, do you know any of these people we have been talking about?

A. No.

Q. You don't know them at all?

A. No.

Q. Ever heard of Mr. Miles?

A. Yes.

Q. You had no contacts with Mr. Miles in connection with this case?

A. No.

Q. Nor with Mr. Cunningham?

A. No.

Q. Nor do you know either of the two defendants in this case?

A. No.

Q. And you could sit as a juror in a criminal case after an indictment by a grand jury, with a perfectly open mind, when you understand that only one side of the case goes to the grand jury?

A. Yes.

Q. And you would not find them guilty unless they were proven guilty by evidence adduced in the case beyond every reasonable doubt?

A. Yes.

Mr. ULRICH: Pass the juror for cause.

(Mr. Fiske being excused by defendants, Mr. Charles B. Lemon, Jr., was drawn as a prospective juror).

Mr. MOORE: Mr. Lemon, did you hear the questions asked by the Court and by myself of the members of the jury?

A. I did.

Q. And if the same questions were asked you, would your [276] answers be in substance the same?

A. About.

Q. Do you know of any reason whatsoever why you could not be a fair and impartial juror in this case?

A. I do not.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Lemon, did you say that you did not know anything about the case at all?

A. Not outside of the fact I heard of it.

Q. Outside from what you may have read in the papers, have you ever discussed the case with anyone who purported to know anything about the case himself?

A. No one at all.

Q. You do not know Mr. Miles, or do you?

A. I have known of him.

Q. In what way do you happen to know of him?

A. Well, being that he was Chairman of the Democratic Party——

Q. Are you a Democrat?

A. No.

Q. But you just heard of him in that way?

A. Yes.

Q. Do you know Mr. Cunningham?

A. I have heard of him; I think I know who he is.

Q. But you have never met the man, or have you?

A. No.

Q. You don't know of any reason why you couldn't be perfectly fair as a juror, do you?

A. No.

Mr. ULRICH: Pass the juror for cause.

(Mr. Neilsen was excused by the defendants, whereupon Mr. Archibald Mark was drawn as a prospective juror, and finally excused by the Plaintiff. Mr. Leslie Lemon [277] was next drawn as a prospective juror, and upon being questioned admitted prejudice in favor of defendant Mookini by reason of friendship; whereupon he was excused by the Court. Mr. Louis A. Soares was next drawn as a prospective juror, and questioned):

Mr. MOORE: Mr. Soares, you heard the questions that the Court asked?

A. Yes.

Q. And you heard the questions I asked?

A. Yes.

Q. If the same questions were asked you now, would your answers be in substance the same?

A. Same.

A. Do you know Mr. Miles?

A. I do.

Q. Is that acquaintance of such a nature that if he was called to testify here it would prejudice you either one way or the other?

A. It would not.

Q. Is your acquaintance with Mr. Miles of a close nature?

A. No, it's just friends.

Q. You call at his house and he at yours?

A. No.

Q. Do you know Mr. Cunningham?

A. I do.

Q. Is there anything in that acquaintance with him that would prejudice you either one way or the other in this case?

A. It would not.

Q. You visit at his house?

A. I do not.

Q. Do you know Mr. Mookini?

A. I do.

Q. You do know Mr. Mookini?

A. I do, as an official of the Democratic Party.

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Q. You do not know him in a social way at all?

A. Yes, I do.

Q. You don't visit, though?

A. Io do not.

Q. Is there anything in your acquaintanceship with Mr. Mookini that would embarrass you in any way to sit as a juror in this case?

A. No.

Q. And you would be fair to the Government and fair to the defendant?

A. I would.

Q. And render a true verdict to the best of your ability upon the evidence?

A. Yes.

Q. Do you know Mr. Lee Chong?

A. No.

Q. You work on a newspaper, do you not?

A. I work in the bindery department—bindery foreman.

Q. That hasn't anything to do with the newspaper itself?

A. No.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Soares, how long did you say you had known Mr. Miles?

A. I have known him since he was a kid going to school.

Q. Went to school together?

A. No, we went to different schools.

Q. You have known him all your life?

A. I have known him, yes, all my life.

Q. Have you had any social contacts with him at all?

A. No.

Q. Belong to any organization he belongs to?

[279]

A. St. Louis Alumni.

Q. St. Louis College?

A. St. Louis College Alumni.

Q. Have you had any connection with him in a political way?

A. I have not.

Q. You really feel that this lifelong acquaintance with him is not going to make it difficult for you to gauge his testimony just as you would any other witness?

A. Yes.

Q. How well do you know Cunningham?

A. Well, I have known him from what I heard about him and talking to him.

Q. But you don't know him as well as you do Miles?

A. No.

Q. You've heard the various statements that were made to the jury here this morning, the facts of the case and everything; do you know of any reason at all why you couldn't be a perfectly fair juror?

A. I do not.

Q. Mr. Soares, we have your oath that you will do that if you are sworn as a juror in this case?

A. Yes.

Q. And you'll decide the case only on the evidence which will be adduced and give the defendant the benefit of every reasonable doubt?

A. Yes.

Mr. ULRICH: Passed for cause.

(Mr. Lamb being excused by the defendants, Mr. Victor C. Ricketts was drawn as a prospective juror, questioned, and later excused by the defendants. Mr. Alfred T. Burlem [280] was drawn as a juror, and questioned as follows):

Mr. MOORE: Mr. Burlem, you heard the questions the Court asked?

A. Yes.

Q. And if the same questions were asked you now, would your answers be in substance the same?

A. Yes.

Q. Do you know of any reason whatsoever why you could not sit as a fair and impartial juror?

A. No.

Q. And if chosen as such you would be fair to these defendants and fair to the Government?

A. Yes sir.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Burlem, you're with the Hub Clothing?

A. Hub Store.

Q. Do I understand that you do not know any of these people that we have been talking about here this morning?

A. No.

Q. Mr. Miles—you don't know him?

A. No.

Q. And Mr. Cunningham?

A. No sir.

Q. Nor either of the two defendants here?

A. No sir.

Q. Do you know a detective, a man named De Ville?

A. I don't think I know him.

Mr. MOORE: A member of the United States Secret Service.

Mr. ULRICH: Yes, a Government "sleuth."

Mr. MOORE: I guess you can call him that.

A. I might have had business with him in the store, but I don't know him.

Q. Anybody else know Mr. De Ville? [281]

(A Juror): I know De Ville.

Q. You do know him?

A. I know of him.

Q. You don't know him well at all?

A. No, not socially.

Q. And you don't know him at all, Mr. Burlem?

A. No.

Q. You don't know of anybody else connected with the case?

A. No.

Q. And we have your assurance, just as we have from the rest of these jurors, that you'll be absolutely fair to the defendant?

A. Yes.

Q. And give the defendants the benefit of every reasonable doubt?

A. Yes.

The COURT: The Government's fourth peremptory.

Mr. MOORE: Waived.

The COURT: Defendant's eighth.

Mr. ULRICH: Let me ask Mr. Damon (Cyril F.) a question.

(After several questions): The defense will excuse Mr. Damon.

(Robert M. Berthe was drawn as a prospective juror, and questioned as follows):

Mr. MOORE: Mr. Berthe, you heard the questions the Court asked?

A. I did.

Q. And the questions I asked?

A. Yes.

Q. And if the same questions were asked you, would your answers in substance be the same?

A. They would. [282]

Q. Do you know Mr. Miles?

A. No.

Q. Or Mr. Cunningham?

A. No.

Q. Or Mr. Mookini?

A. No.

Q. Or Mr. Lee Sau Chong?

A. No.

Q. Do you know of any reason whatsoever, Mr. Berthe, why you could not be a fair and impartial juror in this case?

A. None whatever.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Berthe, do I understand that you do not know any of these people?

A. I do not.

Q. You have had no knowledge of the case in any way at all?

A. Other than what I read in the recent paper.

Q. What is your business connection?

A. Foreman, California Packing Company.

Q. Do you know either of these two defendants?

A. I do not.

Q. And you know of no reason why you couldn't be a perfectly fair jurior?

A. None whatever.

Q. And you will be that?

A. Yes.

Mr. ULRICH: Passed for cause.

The COURT: The Government's fifth.

Mr. MOORE: Waived.

The COURT: Defendants' ninth.

Mr. ULRICH: The jury is satisfactory.

Mr. MOORE: The jury is satisfactory.

The COURT: Let the jury be sworn.

(The trial jury is sworn). [283]

Mr. MOORE: May it please the Court, and gentlemen of the jury: The indictment in this case reads as follows: (reads indictment)

Now gentlemen, we'll put on evidence in support of this indictment to prove the following:

That a Civilian Conservation Camp, which is a part of the Department of the Interior, was created and put into operation out at Schofield Barracks during the early part of 1934; that around the first part of April, 1934, Mr. William E. Miles was appointed Camp Director; that the funds to operate these camps, so far as mess is concerned,—and that's the funds that we're interested in in this case—are paid to the Camp Director by the Department of the Interior through the Finance Officer or office at

Fort Shafter; these particular payments were made by Captain Baldwin, who is the Finance Officer; that these funds are paid at the rate of 50¢ per man per day, that is, for each enlisted person, I guess you'd call them, in the Civilian Conservation Corps; that is, the boys that are out there, not the officers, receive for their mess the sum of 50¢ a day, that is, the mess fund gets that, and that's the way they operate the mess; and these funds are turned oevr to the camp director as a disbursing officer to pay for food that's delivered to the Camp. We will show you that, prior to April, the fruit and vegetables to a great extent were purchased at the commissary at Schofield Barracks, which is operated—that is, the concession for fruits and vegetables is operated by Chun Hoon. We will show you that around the first part of April Mr. Robert Mookini became the mess officer, and Mr. John E. Cunningham was the [284] chief cook, and that Mr. William E. Miles was the camp director; that the orders for food were gotten out by Mr. John E. Cunningham, that is, what was necessary to fed these boys, and turned over to Mr. Mookini to make the purchases; that Mr. Mookini purchased by telephone, or went to town himself or went to Schofield or wherever he had to go to get them, and that shortly after appointing Mr. Mookini as mess officer, or him taking over the duties of mess officer, he was introduced to Mr. Lee Sau Chong by Mr. Cunningham here in Honolulu; and they commenced getting fruits and vegetables from Mr. Lee Sau Chong. We will show you that—for the pur-

pose of showing the general scheme, guilty knowledge, and lack of mistake—* at the end of the first month Mr. Robert Mookini instructed Mr. Lee Sau Chong to put his personal grocery bill on the bills going to the Civilian Conservation Corps—*

Mr. ULRICH: Just state that over, will you please, so I get that.

Mr. MOORE: Will you read that, Mr. Reporter.

(Reporter reads portion marked **)

Mr. ULRICH: That is, to charge it to the Government, is that what you're trying to show?

Mr. MOORE: That's exactly it, Mr. Ulrich. That on these vouchers there were charged various items as being delivered to the Civilian Conservation Camp which were not there at all, and Mr. Cunningham as chief cook initialed them as having received them, and those items were to cover his grocery bill. That on or about May 12th, or just a day before May 12th, being Mothers' Day, a party or a Mothers' [285] Day dinner, I guess you might call it, was given out at the Schofield camp; that there were various items listed upon a voucher of May 12th which did not arrive; those are the ones that I read to you in the indictment, the oysters and the squash and the pumpkins; that in this particular case there were two vouchers came out; one came out with the load and it was dated May 12th; and the original items had the oysters and the 400 pounds of pumpkin on it and some crates of strawberries, amounting to $40.75; $17.50 for the oysters, $6.25 for the strawberries, and $17.00 for the pumpkins.

And in addition to that, they had listed on the original bill, limu 25¢, opai $2.00, opelu 50¢, nuts $12.50, mixed candies $16.25, after dinner mints $1.75, paper plates $3.00, napkins $1.50, and crabs $5.40. That this bill, or the copy of the bill, was not returned; Mr. John E. Cunningham kept that out in the camp, but Mr. Mookini went down to Mr. Lee Sau Chong's store as to these last items that should be off the original bill, they were delivered but they took them off in place of those and put various others—that 400 pounds of squash and 400 pounds of pumpkin; and we will show you that the original three items that I just related to you, that is, the oysters, the strawberries, and the pumpkins, which appeared on the one they made out for delivery, were to cover two items; one was an item of flowers to decorate on Mothers' Day, which was $23.00; and the other item is an item to cover a box of booze, three quarts of whiskey and three quarts of gin. We will further show you, gentlemen, that they have out there what they call a Canteen Fund that they have obtained from selling soda-pop and candy and [286] stuff like that, that is not on the regular thing, and when they want to buy anything on the outside which is not strictly mess, that is, food, that's the fund that they should use. We will show you that during the succeeding months that Mr. Mookini had larger and larger grocery bills, that is, personal grocery bills, and that he requested Mr. Lee Sau Chong and Mr. John E. Cunningham to cover up that bill in these vouchers

that went out to the Schofield Conservation Corps as food for the boys in the camp. We will show you that Mr. Cunningham——

Mr. ULRICH: Just a moment. I haven't objected to anything counsel has raised; of course we contend he will not be able to prove a word; but when it comes to the matter of telling the jury that he's going to prove things which the Court is not going to allow him even if he could, namely, other materials that have to do with some other things started and never finished. There's no showing in this complaint, so far as I can read the indictment, of any personal grocery bill being charged to the Government. If evidence is to be introduced along that line, we'll contend at the proper time that it's irrelevant, incompetent, and immaterial. As long as it's understood, however, that the Court will instruct the jury that all of these remarks of counsel are not to be considered as evidence at all, I am quite willing to have him say anything, but I think at least we should have that instruction to the jury at this time.

The COURT: The Court so instructs you, that any statement made by either counsel concerning their testimony, as [287] to what they expect to prove by the evidence, is not evidence and is not to be considered by you as evidence. The evidence you will take as it comes from the witnesses on the witness stand only.

Mr. ULRICH: Is Mr. De Ville here in the courtroom?

Mr. MOORE: Mr. De Ville of the Secret Service is here.

Mr. ULRICH: I'll ask that all witnesses be put under the rule.

Mr. MOORE: I'll ask that the rule be not invoked with reference to Mr. De Ville, as he is an agent of the United States Secret Service, and he is the person who prepared this particular case, that is, collected the evidence, and during this trial he will probably be called upon by myself for assistance as to any fact that I may overlook. In cases tried in this court for a number of years we've had men who are the head of a department stay in the courtroom. Mr. De Ville is the only Secret Service agent here, and we don't believe that the rule should be invoked as to Mr. De Ville.

The COURT: The fact that he is a Secret Service agent would not entitle him to an exemption.

Mr. MOORE: No, Your Honor.

The COURT: If he's required for assistance to your office and the application is placed on that ground, it will be considered.

Mr. MOORE: Well, Your Honor, I might state that I expect to have and wish to have Mr. De Ville sit alongside of me in the trial of this case so that he can be handy as to anything that I may overlook.

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The COURT: If Mr. De Ville's connection with the preparation of this case is such as to make his attendance helpful and necessary——

Mr. MOORE: It is, Your Honor.

The COURT: It will be granted.

Mr. MOORE: It is, your Honor.

The COURT: But on that ground; not on the ground that he's a Secret Service agent with the Government.

Mr. ULRICH: I think there's another witness—Mr. Kemp.

Mr. MOORE: No, I'm not going to use him. We will show you that Mr. Cunningham remonstrated, and that he was told by Mr. Robert Mookini that there was a lot of cooks that were looking for jobs and that if he knew what was good for him he had better fix it up.

We will show you that Mr. Lee Sau Chong stated, with reference to this bill of May 12th, that the items listed upon that voucher were known by him to be correct; we will show you that Mr. Lee Sau Chong personally delivered these groceries and food and flowers on the deliveries made the following day; we will show you that he signed various vouchers for the manager of Lee Chong, and that he is connected with that concern. We will show you that he had various conversations with Mr. Cunningham during this period of time, that is, between April and September of last year, and that he had full knowledge and it was at his direction and that he was a party to the making and presenting of these false vouchers, and that he knew that they were false and fictitious when they went out.

We will show you that on September 1st they had a luau [289] out in the Civilian Conservation Camp, and just prior to September 1st there was a list of goods delivered to the Civilian Conservation Camp which included wire netting, kiawe wood, and various things which are not food and which should be paid out of the Canteen Fund, and took and listed those as groceries actually delivered; they were listed as yams, honey dew melons, 300 pound pumpkin, 15 gallons of mayonnaise, 10 pounds dried mushrooms; that included various things for the luau, and also flowers and leis for the guests.

We will show you that, after this investigation started, Mr. Lee Sau Chong admitted that he knew that various of these vouchers were not correct when they were sent out and that they were billed to cover something else and not what was actually sent you.

We will show you the same as to Robert Mookini, and we will show you, of course, that this all happened here on this Island, in this City and County of Honolulu, and that it is within the jurisdiction of this Court.

The COURT: Now, before the first witness is called I'll ask counsel and the reporter to pay particular attention to what the Court is about to say, as I have at this time a comment to make that I have not made before but which I believe will be helpful in the proper trial of this case.

You noticed from the reading of the indictment, gentlemen of the jury, that it contained two

counts. Now, that is simply the technical term—"count"—for what you would call the case; it means there were two different crimes or charges made against these defendants; and you [290] should consider the evidence as you hear it as bearing upon one count or the other; but that's not the main point I wish to call your attention to, which is this, which will doubtless be enlarged upon when the formal instructions are given you after they have been presented by respective counsel and settled, and that is this: That you are to consider each of these defendants as though each was alone on trial, and that under the law you may find one defendant guilty and another innocent, or both guilty, or both not guilty; and in considering the evidence as you hear it from the witnesses, the Court feels it's much better that your attention be called to it now than called after you have heard the testimony, because, as I say, while the Court at this time does not know what evidence will be presented, it is altogether probable that certain of the evidence will involve one of these defendants and not the other, and vice versa; and it should be helpful to you to keep that in mind as you will listen to this evidence.

A third point, and the last one I wish to speak of, is this: One defendant on trial is Lee Sau Chong, but the Lee Chong Company has been referred to a number of times. Now remember, Lee Sau Chong is the individual who is now being tried. The Lee

Chong Company is not on trial; it is, I believe, the copartnership for which the defendant Lee Sau Chong works or by whom he is employed, and it is possible, as a statement made by counsel, that it will be shown that he is manager of that Company, but that the Court does not know; but keep these names "Lee Sau Chong" and "Lee Chong Company" distinct in this testimony. Remember that two different offenses are being tried [291] together and that certain evidence may either tend to establish the innocence or the guilt of one defendant and not the other; and keep those questions clearly in your mind as you listen to this testimony. Formal instructions will be given you at the close of the testimony and after counsel have argued the case, but, as I said at the outset, breaking away from precedent, these remarks are made in the hope they will be helpful to you and helpful in obtaining a correct solution of this case.

Do either counsel wish to except to the statement now finished, or to enlarge upon it?

Mr. ULRICH: No exception, Your Honor; I think it very well stated the law.

The COURT: Mr. Moore, have you any exception?

Mr. MOORE: No, Your Honor.

The COURT: Would you care to enlarge upon what the Court has already stated?

Mr. MOORE: I think that there is one matter that I overlooked telling the jury here, as to the

situation of the other defendants who are not on trial; that would probably take a minute to bring it out.

In this case, gentlemen, there are two defendants now on trial; there were four indicted. One defendant, John E. Cunningham, has pleaded guilty. The defendant William E. Miles has been severed; that means that, instead of trying Miles and Mookini and Lee Sau Chong together, that William E. Miles is entitled to a separate trial.

Mr. ULRICH: I think you've told them that one before.

I'll tell them again, in my way, that Lee Sau Chong [292] and the four of them together were indicted; Mr. Miles pleaded guilty; Cunningham, with the consent of the prosecution, was put off by himself, so that he'll be tried separately or later—that is, we assume he'll be tried; however, the record as it now stands merely shows that there are only two men being brought to trial—or Mookini and Lee Sau Chong.

The COURT: And the Court will add, gentlemen of the jury, that you should try this case as though you knew nothing in the world about either Miles or Cunningham in connection with this case, just the same as though it was only these two defendants that have been named, because what disposition has been made or will be made in regard to Miles and Cunningham is not a matter of any concern to this jury at this time. You're concerned with the one question of determining whether or not these de-

fendants or either of them are guilty of the offenses charged, and if guilty it's your duty to find them so; if not guilty, it is equally your duty to find them not guilty. The Court is ready to proceed with the evidence.

Mr. MOORE: May we have a recess at this time, Your Honor; then we'll get one witness over from the Territory. Mr. Marshall, will you call Mr. Lloyd.

The COURT: The Court will grant a short recess at this time; it will be the only recess we have between now and the adjournment.

(Recess—10:55 to 11:05 a. m.)

JAMES W. LLOYD

being first duly sworn, testified as follows: [293]

Direct Examination

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. James W. Lloyd.

Q. You have heard of the Civilian Conservation Corps?

A. Yes sir.

Q. Have you any connection with that, Mr. Lloyd?

A. I have.

Q. And what is your connection with the Civilian Conservation Corps?

A. Business administrator anrd purchasing and contracting officer.

(Testimony of James W. Lloyd.)

Q. Do you know Mr. William E. Miles?

A. I do.

Q. Did he ever have anything to do with the Civilian Conservation Corps?

A. He did.

Q. And when was he appointed, if you know, Mr. Lloyd?

A. He was appointed first in the month of January as assistant director, and then on the 16th of April he was appointed director.

The COURT: What year?

A. 1934; pardon me, sir.

Mr. MOORE: Where is this Camp located, Mr. Lloyd?

A. Schofield Barracks.

Q. On this Island?

A. Yes sir.

Q. And how long did he told office—withdraw that question.

He is not the Camp Director at this time?

A. No sir.

Q. When did he cease to be Camp Director?

A. On the 11th of October, 1934. [294]

Q. As Camp Director did he receive any funds?

A. He did.

Q. And from what department did those funds emanate?

A. From the Interior Department of the Federal Government.

Q. How were they paid over to Mr. Miles?

(Testimony of James W. Lloyd.)

A. By check of the Finance Officer, drawn in settlement of a voucher for subsistence payment upon 50 cents per day per man.

Q. And the men—this 50¢ per day per man—what men were they?

A. Enrolled men.

Q. Of the Civilian Conservation Corps?

A. Of the Civilian Conservation Corps.

Q. At Schofield Barracks?

A. Yes sir.

Q. And those funds so received by Mr. Miles were for what purpose?

A. Subsistence of the men.

Q. And by "subsistence" you mean the food?

A. Yes sir.

Mr. ULRICH: Just a moment. Let this witness testify to anything that he knows of the rules and regulations. If it is in fact for subsistence only, and that's a rule or something, we don't know just what he's giving us; all I want to be assured is that he's giving us testimony which is his understanding of the regulations.

(Mr. Moore whispers to Mr. Ulrich)

Mr. ULRICH: I still don't understand, if Your Honor please, whether this witness is testifying to a regulation that there should be, for example, that he couldn't buy any napkins, salt cellars, or anything except actual edibles, however much they might need them; whether that was a rule [295] of the Interior Department or of his office, or just

(Testimony of James W. Lloyd.)

what he's testifying to. He said it was for subsistence only; I don't know what that means. I think that that question is eliciting evidence that is unintelligible unless we do know.

The COURT: As the Court understands, Mr. Lloyd is the superior officer of this whole C. C. C. work in the Territory—the administrator—and is speaking from his knowledge as such relative to the operation of the C. C. C., is that correct, Mr. Lloyd?

A. Yes sir.

The COURT: Now, will you clear up one matter for the Court. You spoke of a check of the finance officer. Finance officer of what?

A. Finance officer of the United States Army at Fort Shafter.

The COURT: Proceed, Mr. Moore.

Mr. MOORE: Do you know a Mr. Robert Mookini?

A. I do.

Q. Is he in the courtroom here?

A. Yes sir.

Q. Will you indicate who he is, please.

A. The gentleman with the white suit sitting right back of Mr. McGhee.

Mr. MOORE: One of the defendants in this case.

Q. Did he ever have any connection with the Civilian Conservation Corps camp that you know of?

A. He did.

(Testimony of James W. Lloyd.)

Q. And when was that, Mr. Lloyd?

A. Between the dates of January 28th, 1934, and October 17th, 1934.

Q. Do you know what his capacity was out there, that is, what his office was? [296]

A. He was Recreational Officer.

Q. Any other duties at all, that you know of?

A. He was also made, well, I might call it "Mess Officer", by the Camp director.

Q. Who actually paid out the money for the subsistence of these men at the Civilian Conservation Corps?

A. The Camp Director.

Q. And do you know how that was done?

A. By check.

Q. Anything supporting the check?

A. Vouchers, naturally.

Mr. MOORE: You may cross-examine.

Cross-Examination

By BARRY S. ULRICH, Esq.

Q. Just to get your different offices defined; do I understand that you, as the head man—if we may put it that way—you appointed Mr. Miles to his position as Camp Director?

A. Yes sir.

Q. You did that?

A. All appointments, though, are subject to confirmation from Washington.

Q. Subject to confirmation from Washington?

A. Yes.

(Testimony of James W. Lloyd.)

Q. You appointed Mr. Miles camp director and you also removed him, didn't you?

A. Yes sir.

Q. In October of last year?

A. Yes sir.

Q. You say that Mr. Mookini was appointed as Recreation Officer?

A. Yes. [297]

Q. You appointed him Recreation Officer?

A. Yes sir.

Q. Do I understand that you gave him any additional appointment yourself?

A. No sir; those duties were assigned to him by the Camp Director.

Q. Beg pardon?

A. Those additional duties were assigned to him by the Camp Director.

Q. In other words, anything that you may have done outside of this appointment as Recreation Officer is just what has come to you from the Camp Director—what they told you?

A. Correct.

Mr. ULRICH: No further cross-examination of this witness.

The COURT: The Court would like to ask a few questions of Mr. Lloyd.

Q. Is the plan of administration for the C. C. C. camps in Hawaii the same as for the C. C. C. camps throughout the Mainland?

(Testimony of James W. Lloyd.)

A. That I'm not prepared to say; I can't answer that. I am given to understand that most of the C. C. C. work on the Mainland is directly under the Army and that, with the exception of Porto Rico and Hawaii, it's constructed a little bit different, in the same manner as our setup is here today, the Army merely acting as disbursing officer of the funds.

Q. Where did you get your regulations and plan of operations?

A. From the National Park Service in Washington, through the Interior Department.

Q. In what form does that come to you?

A. In the shape of a handbook, with supplements and additions. [298]

Q. Those regulations are modified from time to time, are they?

A. Yes sir.

Q. They come to you from the Park Service?

A. Yes sir.

Q. Is that the Service that confirms your appointments?

A. The Park Service, Your Honor, is a division of the Interior Department; these appointments that I speak of require the confirmation of the Secretary of the Interior, the approval of the Secretary of the Interior.

Q. The Secretary of the Interior is really, then, the approving officer?

A. Yes sir.

The COURT: Anything further, Mr. Moore?

(Testimony of James W. Lloyd.)

Mr. MOORE: No, Your Honor.

Mr. ULRICH: Just one or two questions.

Q. You testified, Mr. Lloyd, these moneys that you have been talking about as "subsistence" moneys were for a mess fund?

A. Yes.

Q. And that they were only for foodstuffs?

A. Yes sir.

Q. Of course they had to have napkins and forks and things like that out there; how were they paid for?

A. Out of the Camp Equipment Fund.

Q. That was a separate fund—Camp Equipment Fund?

A. Yes.

Q. But it was Government money just the same?

A. Oh yes.

Q. Yes, you carry one fund, call it "Mess Fund", and you have a "Camp Equipment Fund" which is booked, if we may say it, differently—in separate accounts?

A. That's correct.

Mr. ULRICH: That's all. [299]

Re-direct Examination.

By WILLSON C. MOORE, Esq.

Q. These camp equipment funds, those were not turned over to the Camp Director, were they?

A. It's part of the camp equipment, surely.

Q. I mean, the funds for the purchases?

A. No; those were purchased direct.

(Testimony of James W. Lloyd.)

Q. The only funds that he had was for mess?

A. Yes sir.

Mr. MOORE: That's all.

Mr. ULRICH: As a matter of fact, there were several different funds; they had a Canteen Fund out there also, didn't they?

A. Yes, but that's a separate thing altogether; that's contributed by the men themselves.

Mr. MOORE: The camp equipment fund—I understand the equipment was bought through some other officer not connected with the camp?

A. Correct.

Q. So that if he wanted any more equipment he had to make special application to you, or something of that sort?

A. Yes sir.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

The COURT: You're excused, Mr. Lloyd.

Mr. MOORE: The next two witnesses that I have will probably take a considerable length of time. As I understand, Your Honor wanted to adjourn as close to half past eleven as possible, I think possibly that this is a good place to stop, because we would just get started on something when we would have to leave it right in the midst. [300]

The COURT: Yes, unless you could at least finish the direct testimony, say, by quarter to twelve, I would prefer to adjourn at this time.

Mr. MOORE: May it please the Court, I feel that the examination of the next two witnesses I

(Testimony of James W. Lloyd.)

would call would take at least an hour on direct, and possibly more.

The COURT: Gentlemen of the jury, the Court at this time admonishes you not to talk about this case to anybody, even to your fellow jurors, until it is submitted to you. I would also suggest that you refrain from reading comments on the evidence that might appear in the papers, if any. Keep your minds open so that you can obtain the moving impressions from the witnesses and from the argument of counsel and instructions of the court that will hereafter be given you. The Court will now adjourn until 9 o'clock tomorrow morning; be in your places promptly at that hour.

(Adjourned—11:18 a. m.) [301]

The above entitled matter came duly on for further trial at 9:00 a. m. on Tuesday, May 14th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants and their respective counsel being present;

WHEREUPON, the following further proceedings were had and testimony adduced:

CLERK (After calling the jury roll): The jury is present.

Mr. MOORE: Ready for the United States.

Mr. ULRICH: Ready for the defendants.

The COURT: Let the Court at this time suggest that as soon as either attorney have their requested instructions prepared they present the

opposing counsel with a copy, so that it may facilitate the work when it comes to settling instructions later. [302]

WILLIAM E. MILES

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By Willson C. Moore, Esq.

Q. What is your name, please?

A. William E. Miles.

Q. You are a defendant in this case, Mr. Miles?

A. I am.

Q. And you understand that you do not have to testify unless you so desire?

A. I do.

Q. Are you willing at this time to testify?

A. I do.

Q. Did you ever have anything to do with the Schofield camp of the Civilian Conservation Corps?

A. I did.

Q. And what connection did you have with that camp, Mr. Miles?

A. I was first Assistant Camp Director, then made Camp Director.

Q. And when were you made Camp Director?

A. (After consulting memorandum): I have the exact dates here; I was made Camp Director on April 16th, 1934.

(Testimony of William E. Miles.)

Q. And when were you relieved as Camp Director?

A. On October—I resigned on October 13th, I think it was; it was immediately after the 10th——

Q. Anyway, sometime during the month of October?

A. Yes sir.

Q. What year?

A. 1934. [303]

Q. As Camp Director of the Schofield camp of the Civilian Conservation Corps did you have anything to do with the messfunds?

A. Yes, I was in charge of it.

Q. And where did you get your funds?

A. From the Finance Officer at Fort Shafter.

Q. And what controlled the amount of funds that you obtained?

A. What's that question again?

Q. In other words, what was the basis upon which you received these funds?

A. That was the ration allowance of the enrolled members of the camp, the men themselves, figured at the rate of 50 cents per day. At the end of the month the aggregate amount of the average per day per man in camp is submitted to the Finance Officer, and upon that basis of 50 cents per head we are drawn a check for the amount.

Q. Then each succeeding month you received the funds for the previous month?

(Testimony of William E. Miles.)

A. For the previous month's attendance.

Q. And that was based upon the roll of the number of men in the camp?

A. Correct.

Q. When you received these funds what did you do with them?

A. I deposited them in the Bishop First National Bank at Schofield Barracks.

Q. And was there any particular name of that account?

A. Camp Director, C. C. C. Camp, Schofield Barracks.

Q. And what was the character of these funds; by that I mean whether or not they were Government, personal, or otherwise? [304]

A. That's Government funds; Department of the Interior, United States Government.

Q. Do you know Mr. Robert Mookini?

A. I do.

Q. During the time that you have testified that you were connected with this Civilian Conservation camp, was Mr. Mookini connected with it?

A. Yes, he was.

Q. In what capacity?

A. As Athletic Officer.

Q. When was that?

A. That was in January—well, I went after they were in; I went on January 29th; they were in before I was in.

(Testimony of William E. Miles.)

Q. Mr. Mookini was there before you went in?

A. Yes.

Q. Did he ever hold any other position besides Athletic Officer?

A. In the latter part of February he was Mess Officer, just before Mr. Mahaffy was relieved as Camp Director.

Q. When you were assistant camp director who was camp director?

A. Mr. Mahaffy.

Q. When Mr. Mahaffy was relieved, who succeeded him?

A. I succeeded him.

Q. And while you were camp director—withdraw that question. During the time that you were camp director, who was mess officer?

A. Mr. Mookini.

Q. And as mess officer what were his duties?

A. He was in charge of the subsistence of the men in the camp and the mess hall and kitchen. [305]

Q. Who had to do with the purchasing of the food for the men?

A. Mr. Mookini, with the camp steward or chief cook; they rank him as chief cook.

Q. Who was the camp steward and chief cook?

A. John Cunningham.

Q. When the food was purchased, how was it ultimately paid for?

A. By check.

Q. Drawn by whom?

(Testimony of William E. Miles.)

A. By myself.

Q. On what?

A. On the Bishop First National at Schofield Barracks.

Q. On what particular account?

A. Camp Director, C. C. C. Camp, Schofield.

Q. Is that the account you referred to here a few moments ago?

A. That's the mess account; that's the only account we have.

Q. And in paying those accounts was there anything that supported the checks, that is, any paper that went along with it?

A. Yes, the usual invoices submitted by the caterer, claims made on the camp for purchases made for the subsistence of the men.

Q. Do you know Lee Sau Chong?

A. I do.

Q. Did you know him in a business way while you were connected with the Civilian Conservation Camp?

A. Yes.

Q. And what was the nature of that business?

A. He operated a sort of supply depot in town here, furnishing vegetables, fruits, and groceries.

Q. To whom did he supply these groceries?

A. To the C. C. C. Camp at Schofield Barracks. [306]

(Testimony of William E. Miles.)

Q. Did he ever get any pay for those supplies?

A. Get any pay for the supplies—yes.

Q. Who paid him?

A. I did.

Q. On more than one occasion?

A. Yes.

Q. Approximately—have you got any idea approximately how many times you paid him for stuff out there?

A. Well, there was the month of—I believe it started in March; April, May, June, July, August, September, October, eight months.

Q. When you were assistant camp director, under Major Mahaffy, do you know where the fruits and vegetables to a great extent were purchased for the Civilian Conservation Corps there?

A. Yes; they were purchased from the commissary depot at Schofield Barracks, and also through Chun Hoon, who has a concession at Schofield Barracks, through the Post Exchange.

Q. That is, Chun Hoon has a vegetable——

A. Concession.

Q. From the Post Exchange?

A. Well, it's considered, I understand, as part of the Post Exchange, a concession which was granted Mr. Chun Hoon.

Q. After you became camp director and Mr. Mookini became mess officer, where were these fruits and vegetables purchased to a great extent, if you know?

(Testimony of William E. Miles.)

A. Well, for the first few months there was continued buying from Chun Hoon, and buying from Lee Chong, and toward the latter part of it practically all of the purchases were made from Mr. Lee Chong.

Q. Do you recall the evening or the occasion of Mothers' Day, 1934? [307]

A. I do.

Q. Just prior to that day did you see Lee Chong?

A. Yes, I did.

Q. When you speak of Lee Chong, whom do you mean, Mr. Miles?

A. The gentleman sitting right there (indicating).

Q. The man with the dark coat here (indicating)?

A. Yes.

Mr. MOORE: Indicating the defendant, who is indicted under the name of Lee Sau Chong.

Q. And where did you see him, Mr. Miles?

A. In the camp grounds there.

Q. And do you know what he was doing in the camp at that time?

A. On the day prior to Mothers' Day?

Q. That's it.

A. Yes; he was delivering the groceries that was ordered for the camp.

Q. Did you check the goods that were delivered that day?

(Testimony of William E. Miles.)

A. I did not. I left word with Mr. Cunningham that I would like to see Mr. Lee Chong if possible, if he came into camp to notify him that I would like to see him before he left camp.

Q. Now Mr. Miles, upon the delivery of the goods at the Schofield camp were there any receipts of any kind given?

A. To the vendor?

Q. That's right.

A. Yes.

Q. And who gave those receipts?

A. Well, the chief cook, Cunningham, or whoever checked in the goods upon delivery, signed the receipt for them; in some instances Mr. Mookini checked in some of those himself.

Q. Were there more than one copy of this receipt or voucher, or whatever it is? [308]

A. I always received one copy in the office.

Q. Did you ever receive the original?

A. No, I never saw the original; we always got the duplicate.

Q. Do you know what became of the original?

A. I do not know.

(Mr. Moore shows a document to opposing counsel.)

Mr. MOORE: Showing you what appears to be——

Mr. ULRICH: Just a minute, before we describe the paper and read it to the jury. This, if Your Honor please, brings up the question that I had

(Testimony of William E. Miles.)

expected to raise, as I believe I indicated to the Court before on a motion for a return of evidence. It's my understanding of the law that the records should come in through the defendant himself and that they can't be brought in involuntarily otherwise. I am expecting to argue that point at this time. If counsel would like to have it done without the presence of the jury, it's quite all right. It raises a question of law that has to be presented at some time, and I am expecting to argue it now.

Mr. MOORE: May it please the Court, these are not sought to be introduced in evidence by this witness. At a later time they will be sought to be introduced, and I think that the proper procedure is to await the time until they are offered in evidence. At this time, of course, we propose to offer them for the purpose of identification. That does not mean in any way, shape or form that they go to the jury until they are offered in evidence.

The COURT: The Court would suggest that the document which the United States Attorney has be marked for identification by the Clerk.

Mr. MOORE: I'll have the witness identify the initials. [309]

The COURT: Then the record can show what document is referred to without disclosing its contents to the jury.

Mr. MOORE: Showing the witness what purports to be——

(Testimony of William E. Miles.)

Mr. ULRICH: Just a moment. If you're going to describe the document you might just as well have it read to the jury. It's my contention this has to go through our witnesses and not through the prosecution's. I object to having it read to the jury or described.

Mr. MOORE: I'm not reading the contents; I'm just reading the identifying particulars so that we know what we're talking about.

Mr. ULRICH: No occasion for reading or describing the document; if the witness identifies the document, then it's marked by the Clerk, and that's all that's necessary.

The COURT: Will you let the Court see what you have, Mr. District Attorney.

(Mr. Moore hands document to the Court.)

The COURT: This is all part of one; two sheets in one?

Mr. MOORE: Original and copy, Your Honor.

The COURT: Mr. Clerk, will you please mark this for identification (handing document to Clerk).

Mr. MOORE: I'll have the original marked, Your Honor, as one exhibit, and the copy marked as another exhibit for identification.

CLERK: United States Exhibit No. 1 and United States Exhibit No. 2, the carbon being marked No. 2, for Identification.

Mr. MOORE: Showing the witness United States Exhibit No. 1 for Identification; do you know what that is, Mr. Miles?

(Testimony of William E. Miles.)

A. Yes, I know what it is now.

Q. What is it? [310]

A. It's the invoice submitted by Lee Chong Company——

Mr. ULRICH: Just a moment, if Your Honor please. This objection of mine is made in good faith, if the Court please, for the purpose of presenting this case in an orderly fashion to the jury. If the witness can explain the document, might as well have it in. As a matter of fact, I'm gradually getting to the point where it might as well go in; but I still insist this has been introduced for identification only; that the witness can't describe it, counsel can't describe it, until introduced into evidence and received as such; then we'll have plenty of description.

The COURT: It shall not be read to the jury by anybody unless it's offered in evidence and admitted by the Court.

(Argument).

The COURT: Mr. Witness, let me have the document, please.

(Witness hands document to the Court.)

The COURT: Mr. witness——

A. Yes, Your Honor.

The COURT: This document marked "United States Exhibit 1", let me ask you, was this an invoice presented to you as camp director for payment of articles alleged to have been furnished to the C. C. C. Camp?

(Testimony of William E. Miles.)

A. (After looking at document) No sir, not this.

Mr. MOORE: Calling your attention to the initials at the bottom of the page of United States Exhibit 1 for Identification, written in blue ink, do you know whose initials those are?

A. I recognize the initials as Mr. John Cunningham's.

Q. And Mr. Cunningham at the date, that is, May 12th, what was his position with reference to the camp? [311]

A. He was chief cook.

Q. Calling your attention to United States Exhibit 2 for Identification, particularly to the signature at the bottom of the page, do you know that signature?

A. Yes.

Q. Whose signature is it?

A. Robert K. Mookini.

Q. And what was his position on May 12th with reference to the Civilian Conservation Camp?

A. Mess officer.

(Mr. Ulrich obtains from the Clerk these two exhibits).

Mr. MOORE: Showing the witness a document dated May 12th, 1934——

The COURT: Has it been marked for identification?

(Testimony of William E. Miles.)

Mr. MOORE: Just a moment and I'll get it. Do you know the signature on the bottom of that, written in pencil?

A. I do.

Q. Whose signature is it?

A. Robert Mookini.

Mr. MOORE: I'll ask that this be marked for identification.

(Marked "United States Exhibit No. 3 for Identification").

Mr. MOORE: Showing you a document here, and calling to your attention some pencil writing at the bottom of the page; do you know who wrote that?

A. That's Mookini's scrawl.

Mr. MOORE: I'll ask that this document be marked for identification.

(Marked "United States Exhibit No. 4 for Identification")

Mr. MOORE: Calling your attention again to United States Exhibit No. 4 for Identification, did you ever see that document at the Civilian Conservation Camp? [312]

A. Yes; this is the Camp file invoice; payment was made on this.

Q. Payment was made on that voucher?

A. Yes.

Q. Showing you a document here, and calling your attention to the signature indicated here; do you know whose signature that is?

(Testimony of William E. Miles.)

A. That's Mr. Lee Chong's.

Q. Is it the man referred to here as Lee Sau Chong?

A. Yes.

Mr. MOORE: I'll ask that this document be marked for identification.

(Marked "United States Exhibit No. 5 for Identification")

(Mr. Moore shows a check book to Mr. Ulrich)

Mr. MOORE: Showing you a book here; do you know what that is?

A. That's the camp check book, against the camp mess fund.

Q. Is this the check book that covers the account that you spoke of in the Bishop First National Bank?

A. It is.

Mr. MOORE: I'll ask that this check book be marked for identification.

Mr. ULRICH: That check book may be received in evidence, if Your Honor please; our contention does not go to that; that's from the Government's custody, it's their own record. I have no objection to the introduction of that in evidence.

Mr. MOORE: At this time, may it please the Court, we offer the check book in evidence?

The COURT: How is it designated?

Mr. MOORE: I imagine it will be designated as United States Exhibit "A" in evidence.

The COURT: It will be admitted. [313]

(Marked "United States Exhibit A")

(Testimony of William E. Miles.)

Mr. MOORE: Calling your attention to a check in this book numbered 14 and dated June 6, 1934; do you know what that check was for?

A. Number 14, $901.60; well, it's to pay Lee Chong for the May claims.

Q. Has it any relation to U. S. Exhibit No. 5, showing you the exhibit?

A. It has, it is.

Q. And what relation does it have to that particular exhibit?

A. To pay for subsistence that was furnished by Lee Chong Company to the Camp.

Q. Does that check cover the amount of that Exhibit, which is U. S. Exhibit No. 5 for Identification?

A. It does.

Q. Calling your attention to the reverse side of that check; whose signature appears on the upper line of the endorsements?

A. I recognize that signature as Mr. Lee Chong's.

(Mr. Moore hands check book to Mr. Ulrich; defendants look over check book).

*Mr. MOORE: Showing you U. S. Exhibit 4 for Identification, that you testified to was part of the records of the Civilian Conservation Camp; I'll ask you to look over this Exhibit carefully and tell us whether you questioned anyone about any item appearing upon that exhibit?

(Testimony of William E. Miles.)

Mr. ULRICH: If Your Honor please, I have come to the conclusion that, in the interest of clarity and furnishing the jury, we should put all of these things in at this time. I am going to withdraw the objection to that I heretofore made [314] to the introduction of these records, and I consent to their introduction through the witness at this time; it would be impossible to cross-examine the witness otherwise, so I withdraw the objection.

Mr. MOORE: At this time, may it please the Court, we offer U. S. Exhibit 1 for Identification, in evidence.

The COURT: Let it be received.

(Marked—"United States Exhibit B")

U. S. EXHIBIT "B".
Admitted.
Crim. #8518 U. S. Exhibit #1. Marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

Chun Yau Chee
Successor to Lee Chong Co.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Fresh Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Oysters	3.50	" 100's	17.50

(Testimony of William E. Miles.)

200	"	Paper Plates	1.50	" "	3.00
1000	"	" Napkins			1.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
25	Bskts.	Fresh Strawberries	.25	" Bskt.	6.25
12	lbs.	" Crab (Large)	.45	" lb.	5.40
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	" Celery	2.00	" "	8.00
6	Bchs.	Parsley	.05	" Bch.	.30
12	"	Turnips	.10	" "	1.20
4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
2	Case	Red Table Apples	2.55	" Case	5.10
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Dozen Bchs.	Spring Onion	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	.20	" lb.	5.00

2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
3	Rolls	Lemo			.25
		Opai			2.00
		Dried Opelu			.50
50	lbs.	Mixed Nuts	.25	" lb.	12.50
65	lbs.	Ass't Candy	.25	" "	16.25
1	Box	After Dinner Mint			1.75
1	lb.	Hot Pepper			.30
60	lbs.	Cooking Bananas	.06	" lb.	3.60
400	"	Pumpkin	.04¼	" "	17.00
					$231.00

Received the above articles:
(s) J. E. C.

(Testimony of William E. Miles.)

Mr. MOORE: I now offer U. S. Exhibit 2 for Identification, in evidence.

The COURT: It will be received.

(Marked—"United States Exhibit "C")

U. S. EXHIBIT "C"
Admitted.

Crim. #8518 U. S. Exhibit #2. Marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

Chun Yau Chee
Successor to Lee Chong Co.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Fresh Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Oysters	3.50	" 100's	17.50

200	"	Paper Plates	1.50	" "	3.00
1000	"	" Napkins			1.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
25	Bskts.	Fresh Strawberries	.25	" Bskt.	6.25
12	lbs.	" Crab (Large)	.45	" lb.	5.40
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	" Celery	2.00	" "	8.00
6	Bchs.	Parsley	.05	" Bch.	.30
12	"	Turnips	.10	" "	1.20
4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
2	Case	Red Table Apples	2.55	" Case	5.10
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Dozen Bchs.	Spring Onion	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	.20	" lb.	5.00

2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
3	Rolls	Lemo			.25
		Opai			2.00
		Dried Opelu			.50
50	lbs.	Mixed Nuts	.25	" lb.	12.50
65	lbs.	Ass't Candy	.25	" "	16.25
1	Box	After Dinner Mint			1.75
1	lb.	Hot Pepper			.30
60	lbs.	Cooking Bananas	.06	" lb.	3.60
400	"	Pumpkin	.04¼	" "	17.00
					$231.00

Received the above articles:
(s) J. E. C.

(Testimony of William E. Miles.)

Mr. MOORE: I offer U. S. Exhibit 3 for Identification, in evidence.

The COURT: It is ordered admitted.

(Marked—"United States Exhibit D")

U. S. EXHIBIT "D".
Admitted.

Crim. 8518 U. S. Exhibit #3 marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

(In pencil) delivered by Lee Chong

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Mixed Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Fresh Oysters	3.50	" 100's	17.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	Calif. Celery	2.00	" "	8.00
6	Bchs.	Ame. Parsley	.05	" Bch.	.30
12	"	White Turnips	.10	" "	1.20

4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
6	Cases	" Red Apples	2.55	" Case	15.30
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Doz. Bchs.	Spring Onions	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	20.	" lb.	5.00
2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
1	lb.	Hot Pepper	.30	" "	.30
60	lbs.	Cooking Bananas	.06	" "	3.60
400	"	Pumpkin	.04¼	" "	17.00
400	"	Fresh Spinach	.04	" "	16.00
400	"	White Squash	.05	" "	20.00
40	"	Fresh Lima Beans	.08	" "	3.20
				Total	231.00

Received the above articles
(s) ROBERT K. MOOKINI.

(Testimony of William E. Miles.)

Mr. MOORE: I offer U. S. Exhibit 4 for Identification, in evidence.

The COURT: It will be admitted.

(Marked—"United States Exhibit E")

U. S. EXHIBIT "E".
Admitted.
Crim. 8518 U. S. Exhibit #4 marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

(In pencil) delivered by Lee Chong

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Mixed Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Fresh Oysters	3.50	" 100's	17.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	Calif. Celery	2.00	" "	8.00
6	Bchs.	Ame. Parsley	.05	" Bch.	.30
12	"	White Turnips	.10	" "	1.20

4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
6	Cases	" Red Apples	2.55	" Case	15.30
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Doz. Bchs.	Spring Onions	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	20.	" lb.	5.00
2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
1	lb.	Hot Pepper	.30	" "	.30
60	lbs.	Cooking Bananas	.06	" "	3.60
400	"	Pumpkin	.04¼	" "	17.00
400	"	Fresh Spinach	.04	" "	16.00
400	"	White Squash	.05	" "	20.00
40	"	Fresh Lima Beans	.08	" "	3.20
				Total	231.00

Received the above articles
(s) ROBERT K. MOOKINI.

(Testimony of William E. Miles.)

Mr. MOORE: I now offer U. S. Exhibit 5 for Identification, in evidence.

The COURT: It will be admitted.

(Marked—"United States Exhibit F")

U. S. EXHIBIT "F".
Admitted.

Crim #8518 U. S. Exhibit #5 marked for ident.

Chun Yau Chee
Successor to Lee Chong Co.

STATEMENT.

P. O. Box 1958 Telephone 5901

Honolulu, T. H., May 31st, 1934.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market
Groceries

"C. C. C. Camp." Schofield Barracks Upperpost.
Schofield Oahu T. H.

May 1st,	1934	Mdse.	$185.58
" 4th,	"	"	90.30
" 10th,	"	"	23.21
" 12th,	"	"	231.00
" 16th,	"	"	127.75
" 17th,	"	"	72.80
" 23rd,	"	"	70.34
" 25th,	"	"	59.55
" 29th,	"	"	41.12
		Total	231.00

I certify that the above account is correct and just and that payment therefor has not been received.

By (s) LEE CHONG.
Lee Chong, Manager.
CHUN YAU CHEE.

Paid 6/7/34. Lee Chong, Mr. With Thanks.

[103]

(Testimony of William E. Miles.)

(Reporter reads last question, marked *, page 84)

A. The item of 500 oysters, "500 Only Fresh Oysters".

Q. And whom did you question about that?

A. Cunningham, first.

Q. And did you question anyone else?

A. Just Cunningham at the time.

Q. I mean, later on did you question anyone else? [315]

A. Well, I questioned Lee Chong later on, several months later, after the investigation started at my instigation.

Q. Ever have any conversation with Mr. Mookini about this?

A. That was later on.

Q. Well, how much later on?

A. In the month of—in the latter part of—no, it was the early part of September, when this thing came to a head.

Q. What did he have to say with reference to that item?

A. I told him that Cunningham had told me that this item was for Flowers, and he told be that we had oyster stew, and referred to the menu for that particular date.

Q. Did you question any of the other items, Mr. Miles?

A. That was the only item that looked queer to me, for the reason that feeding the boys fresh oys-

(Testimony of William E. Miles.)

ters—although we had fresh oysters at the officers' table occasionally—but a large supply of 500 fresh oysters was a little bit—but when he mentioned the oyster stew I paid no more attention to it, I just let it go.

Q. Did you ever see, while you were there at the Conservation Camp, the original of that voucher?

A. This is the only voucher that was ever in my possession, and I don't remember of any other voucher.

Q. This appears to be a carbon copy? (showing document to the witness).

A. Yes.

Mr. ULRICH: Let me see that, please.

(Mr. Moore shows document to Mr. Ulrich)

Mr. MOORE: And you had similar vouchers to this from Lee Chong?

A. Yes.

Q. And the ones contained in the files at the Camp, were [316] they the original, or the copy?

A. Those was the ones contained in the files of the Camp.

Q. I mean, as a usual thing did you have the original or the copy out there?

A. Well, I didn't take particular notice; sometimes we had original, sometimes the copy; this particular voucher, however, was out of the camp files that I turned over to Mr. Lloyd when I made my report to him.

(Testimony of William E. Miles.)

(Mr. Moore shows documents to Mr. Ulrich)

The COURT: Mr. Moore, how much longer do you expect to take with the Director?

Mr. MOORE: Oh, it'll take easily half an hour, I imagine.

The COURT: Gentlemen of the jury, at this time we'll have a short recess; and remember the admonition heretofore given you.

(Recess—9:55 to 10:13 a. m.)

Mr. MOORE: Showing you a document dated September 1st, 1934, I call your attention to the initials at the bottom of that; whose initials are those?

A. I recognize that as Mr. John Cunningham's.

Mr. MOORE: At this time may it please the Court, we'll offer the document just identified by the witness as United States Exhibit "G" in evidence.

The COURT: Has opposing counsel seen it?

Mr. MOORE: Yes, Your Honor—you've seen it, Mr. Ulrich?

Mr. ULRICH: Yes, Your Honor, I have. (Mr. Ulrich again examines the document). Might as well let the whole thing go to the jury now.

The COURT. You are offering just one of those documents?

Mr. MOORE: I am offering one at a time; I'll offer them [317] in their sequence, Your Honor.

The COURT: Let the record show that it is admitted as "Exhibit G".

(Testimony of William E. Miles.)

Crim. 8518.
U. S. EXHIBIT "G".
Admitted.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market
Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., Sept. 1st, 1934

"C. C. C. Camp" Schofield Barracks Upperpost Oahu TH
Honolulu, T. H.

4	Only	Dressed Pigs 365#	@ $ .22	Per lb.	$ 80.30
100	lbs.	King Salmon	.165	" "	16.50
450	"	Strained Poi	.05	" "	22.50
10	"	Sml. Hot Pepper	.30	" "	3.00
5	"	Long " "	.30	" "	1.50
50	"	Spring Onions	.06	" "	3.00
300	"	Taro Top	.08	" "	24.00
300	"	Sweet Potatoes	.015	" "	4.50
50	"	Calif. Yam	.10	" "	5.00
125	"	Fresh Tomatoes	.08	" "	10.00

150	"	Fowl Chicken	.24	" "	36.00
100	Only	Fresh Cocoanuts	.08	" Pce.	8.00
200	Lbs.	" Mullets	.29	" lb.	58.00
10	"	Hawaiian Red Salt	.09	" "	.90
200	"	Fresh Pineapples	.025	" "	5.00
350	"	Water Melon	.06	" "	21.00
150	"	Pork Belly	.215	" "	32.25
150	"	Round Steak	.29	" "	43.50
3	Cases 150's	Oranges	4.75	" Cs.	14.25
1	"	Lemons	6.50	" "	6.50
150	lbs.	Cooking Bananas	.07	" lb.	10.50
300	Pieces	Opelu (29#)	.35	" "	10.15
25	"	Kukui Nuts	.08	" Pcs.	2.00
25	Rolls	Lemu	.08	" "	2.00
15	Quarts	Opehi	2.25	" Qt.	33.75
2	Bags	Hawaiian Salt	1.25	" Bag	2.50
6	Cases	Honey Dew Melon	2.50	" Cs.	15.00
300	lbs.	Pumpkin	.045	" lb.	13.50
10	"	Dried Mushroom	1.90	" "	19.00
15	Gallons	Mayonnaise	1.50	" Gl.	22.50
				Total	$526.60

Received the above articles
OK (s) J. E. C.

(Testimony of William E. Miles.)

Mr, MOORE: Showing you a document dated September 1st, directed to the "C. C. C. Camp"; is that one of these vouchers of Lee Chong?

A. Yes, it's the original of those.

Mr. MOORE: I offer this in evidence as United States Exhibit "H".

The COURT: Let it be admitted.

Crim. #8518.
U. S. EXHIBIT "H".
Admitted.

P .O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco.

Cor. Queen & Awa Streets, Aala Market
Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., Sept. 1st, 1934

"C. C. Camp" Schofield Barracks Upperpost
Oahu, T. H.

365	lbs.	Dressed Pig	@ .22	Per lb.	$ 80.30
100	"	King Salmon	.165	" "	16.50
450	"	Strained Poi	.05	" "	22.50
10	"	Sml. Hot Pepper	.30	" "	3.00
5	"	Hot Long "	.30	" "	1.50
50	"	Spring Onions	.06	" "	3.00
300	"	Taro Top (Lau-lau)	.08	" "	24.00

300	"	Sweet Potatoes	.015	" "	4.50
25	"	Calif. Yam	.10	" "	2.50
125	"	Fresh Tomatoes	.08	" "	10.00
150	"	Stewing Chicken	.24	" "	36.00
100	Only	Fresh Cocoanuts	.08	" Pce.	8.00
200	lbs.	" Mullets	.29	" lb.	58.00
10	"	Hawaiian Red Salt	.09	" "	.90
200	"	Fresh Pineapples	.025	" "	5.00
350	"	Water Melon	.06	" "	21.00
150	"	Pork Belly	.215	" "	32.25
150	"	Round Steak	.29	" "	43.50
3	Cases	150's Oranges	4.75	" Case	14.25
1	"	Lemons	6.50	" "	6.50
150	lbs.	Cooking Bananas	.07	" lb.	10.50
300	Pces.	Opelu Fish (29#)	.35	" "	10.15
25	"	Kukui Nuts	.08	" Pce.	2.00
25	Rolls	Lemu	.08	" "	2.00
15	Qts.	Opehi	2.25	" Qt.	33.75
2	Bags	Hawaiian Salt	1.25	" Bag	2.50
				Total	$454.10

(Testimony of William E. Miles.)

Mr. ULRICH: Just designate what that is as it goes in.

Mr. MOORE: This is voucher dated September 1st, 1934, in the sum of $454.10. The one just prior to that, Exhibit "G", is a similar voucher under the same date, for $526.60.

Q.—Now showing you document marked "Statement", dated September 30, 1934; do you know the signature that appears on the bottom of that document?

A. That's Mr. Lee Chong's signature.

Mr. MOORE: We'll offer in evidence at this time——

Mr. ULRICH: Is that the document you just showed me?

Mr. MOORE: Yes (shows document to Mr. Ulrich). We will offer in evidence a document which purports to be a statement of Lee Chong Company, dated September 30, 1934, in the sum of $857.78.

Mr. ULRICH: No objection.

The COURT: It will be admitted.

(Marked—"United States Exhibit I")

(Testimony of William E. Miles.)

Crim. #8518.
U. S. EXHIBIT "I".
Admitted.

STATEMENT.

P. O. Box 1958 Telephone 5901

Honolulu, T. H., Sept. 30, 1934.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market
Groceries

"C. C. C. Camp" Schofield Barracks Upperpost
Oahu TH

Sept.	1, 1934	Mdse.	$ 9.00	
"	1 "	"	47.73	454.10
"	1 "	"	454.10	72.50
"	3 "	"	49.30	9.00
"	4 "	"	30.75	47.73
"	8 "	"	63.85	49.30
"	11 "	"	37.90	30.75
"	14 "	"	49.00	63.85
"	18 "	"	40.20	37.90
"	19 "	"	1.10	49.00
"	22 "	"	53.80	40.20
"	25 "	"	21.05	1.10
				53.80
			$857.78	21.05
				930.28s
				72.50-
				857.78

I certify that the above account is correct and just and that payment therefor has not been received.

By (s) LEE CHONG,
Manager.

[106]

(Testimony of William E. Miles:)

Mr. MOORE. Showing you a document dated September 1st, 1934; do you know whose signature appears on the bottom of that?

A. That's Mr. Lee Chong's. [318]

Mr. MOORE: At this time we'll offer in evidence a document which purports to be a voucher, under date of September 1st, 1934, by the Lee Chong Company, against the "C. C. Camp" Canteen, for $72.50.

The COURT: It will be admitted.

(Marked—"United States Exhibit J")

Crim. #8518.

U. S. EXHIBIT "J".

Admitted.

P. O. Box 1958 Telephone 5901

Honolulu, T. H. Sept. 1st, 1934.

LEE CHONG COMPANY

Cor. Queen & Awa Street, Aala Market

Groceries

"C. C. C. CAMP" CANTEEN

Schofield Barracks Upperpost, Oahu TH

The following articles in good order and condition.

Note: Please see that the articles are in good order and sufficient before signing this receipt.

(Testimony of William E. Miles.)

Keawe Wood	$ 6.00
Chicken Wire	.50
Empty Bags	1.30
Rent for Chairs	2.00
Paper Plates, Napkins, Cups Bowls and Spoons	37.80
Cigars and Cigarettes	10.40
Hawaiian Pudding	8.00
Flower Leis	6.50
	$72.50

I certify that the above account is correct and just and that payment therefor has not been received.

By (s) LEE CHONG [107]

Mr. MOORE: Showing you a document dated October 12th, 1934, calling your attention to the signature just over the word "Manager" appearing at the bottom of the typewritten portion of this document; do you know whose signature that is?

A. Mr. Lee Chong.

Q. Calling your attention to the signature appearing under the words written in ink "Certified a true Original"?

A. Robert K. Mookini.

Mr. MOORE: At this time we will offer in evidence a purported receipt dated October 12, 1934, for $820.13. (Showing the document to Mr. Ulrich).

The COURT: The document will be admitted.

(Marked—"United States Exhibit K")

(Testimony of William E. Miles.)

Crim. #8518

U. S. EXHIBIT "K".

Admitted.

Honolulu, T. H.

October 12, 1934.

Received from the CCC Camp, Camp Directors Fund, Schofield, T. H. the sum of EIGHT HUNDRED TWENTY AND 13/100 DOLLARS as partial payment of Account Rendered of $930.28 (Nine Hundred Thirty and 28/100 Dollars) leaving a balance due and unpaid in the sum of One Hundred Ten and 15/100 Dollars ($110.15), for September, 1934.

LEE CHONG CO.

Per (s) LEE CHONG

Manager.

$820.13

Certified a true original

ROBERT K. MOOKINI

Q. M. CCC Camp [108]

Mr. MOORE: Mr. Miles, showing you United States Exhibit "G", have you ever seen that document before?

A. It was never in my possession—just a minute, I'd like to look at this again—yes, I saw this document.

Q. Where did you first see it?

(Testimony of William E. Miles.)

A. It was sent to the Camp by Mr. Lee Chong; through the mail, I think it was; either it was delivered in person, or by mail.

Q. Anyway, it got to the Camp?

A. It got to the Camp.

Q. What did you do with it, if anything? [319]

A. With this?

Q. Yes.

A. I believe this is the voucher which I paid.

Q. Around September 1st, 1934, was there any unusual activity at the Schofield Camp of the Civilian Conservation Corps?

A. Around September 1st?

Q. Yes.

A. Yes. We were getting ready for the closing of our first six months period of the E. C. W.—Emergency Conservation Works.

Q. That's the immediate superior of the C. C. C.?

A. Yes; for the period of the enrollment; and *there several* boys—around 40 and some odd, leaving Camp, and we decided to give them a farewell luau.

Q. Did you have a luau?

A. We did.

Q. Now, to have this luau did you have to obtain any goods that were not food to put on the luau?

A. Oh, no, not out of the Government funds.

(Testimony of William E. Miles.)

Q. Showing the witness, in addition to Exhibit "G", showing Exhibit "H", which is the bill of September 1st, Mr. Ulrich, for $454.10; also showing him Exhibit "J", which is the voucher for $72.50, the small one——

A. May I correct this now; I got to the statement——

Q. Also showing him United States Exhibit "I", which is a statement in the sum of $857.78; the small one, Mr. Ulrich; (showing document to Mr. Ulrich); and also showing the witness United States Exhibit "K", which is the receipt for $820.13. Now, with those documents in front of you, Mr. Miles, can you explain what they are? You'll have to do it [320] slowly, if you can explain them, so that counsel will understand what we're talking about.

A. Yes. Before commencing, I want to make a little correction on the previous testimony made by me in regard to Exhibit "G".

Q. That is the voucher for $526.60?

A. Yes. That claim was the first invoice sent to me by the Lee Chong Company, signed by Mr. Cunningham, that came into the office, and——

Mr. MOORE: Just a moment, now. (Hands a document to jurors).

A. (continued): for the September 1st delivery. Later, during the month, when we were getting ready to pay our bills, about October, I took it upon

(Testimony of William E. Miles.)

myself to check these September accounts, because I had the general running then of the mess at the Camp, and scrutinized these purchases a little bit more carefully than I had been doing in the previous part. I noticed there were certain items on this bill that were not listed; for instance, like purchases for paper plates, napkins, and cups, and bowls, and spoons. I got in touch with Mr. Lee Chong; I was in town; and I found he had gone to Schofield Barracks; and I 'phoned out to Schofield Barracks and I told him I would be in town; left word with Lee Chong there that I would be in town waiting for him.

Q. Did you see Lee Chong?

A. Yes.

Q. Let's have the conversation, Mr. Miles.

A. I saw Mr. Lee Chong and his clerk in the office. I told Mr. Lee Chong, "How did he fix this bill up; where was the items for the other, the keawe wood and chicken wire and things we had purchased for that luau"; and he said, [321] "Well, it's all in the bill"; but he called his clerk, and the clerk pointed out to me what items there were on this original bill that had been changed to other articles to match up the amount that was supposed to have been these papers napkins and cups and keawe wood, amounting to $72.50.

Q. These other items, are those the items that appear on United States Exhibit "J"?

A. Yes, it does;——

(Testimony of William E. Miles.)

Mr. MOORE: Just a moment. (Shows document to jurors).

Q. Now, during this conversation, or when this clerk, you say, was checking these items, was Mr. Lee Chong present?

A. He was there with the clerk and myself.

Q. After the clerk checked those items, what happened, if anything?

A. Well, it all turned out to be these items on Exhibit "J", amounting to $72.50. I told Lee Chong, "Well, Lee Chong, these things are not chargeable to the mess fund, and", I says, "it cannot be charged to the mess fund, and you'll have to charge this to the C. C. C. Camp Canteen"—a little store we had down there—"and," I says, "you'll get paid from this, but," I says, "you change this bill and correct it so that the actual amounts which is permissible to the mess account, amounting to $454.10, I'll pay you on that."

Q. Did he change it?

A. He changed it.

Q. Have you the changed voucher there?

A. I have it in my hand; it's Exhibit "H".

(Mr. Moore shows document to the jurors).

Q. Did you pay either one of these vouchers, that is, the Exhibit "H" for $454.10, or the Exhibit "G", for $526.60?

A. I paid them on Exhibit "H", the corrected invoice for [322] $454.10, on his final statement of September 30th, total amount $857.78, less $37.65

for charges irregularly made on the May claims here, previously made, totaling $820.13, that was the check I paid him, reimbursing the Government.

Q. Showing you United States Exhibit "A", and calling your attention to check No. 51, under date of October 10th, 1934; has that check any reference to United States Exhibit "H" which is the bill for $454.10?

A. Yes, that amount of $454.10 is included in that $820.13; the total charge of the final statement of $857.78 is noted in a memorandum on the stub here: "$857.78 September bill (of Lee Chong Company), deduction made, improper charge of May 12/34, $37.65, balance $820.13".

Q. This notation that you've just read, was that made at the time this check was drawn?

A. Yes.

Q. By yourself?

A. Yes sir.

Q. And kept as a record in this check book?

A. Yes sir.

(Mr. Moore shows notation to the jurors)

Q. Did you receive a receipt from Mr. Lee Chong?

A. I did.

Q. Which one is that; is that here?

A. No, that must be——

Q. Do you know what that is (indicating)?

A. This is it, yes. This receipt was not turned over to me; it was turned over to my successor, Mr.

(Testimony of William E. Miles.)

Bob Yates, because the check was paid on the day I turned over the property to my successor, Mr. Yates, down there.

Q. And, Mr. Miles, how did you arrive at this figure of $37.65? [323]

A. That $37.65 includes items that were claimed to have been fictitiously charged against the C. C. C. Camp as of May 12th, including the 500 oysters and a few other items, and it's covered in my report to Mr. Lloyd. I can't remember just exactly what the items are, now, but I have a report in.

Q. Showing you United States Exhibit "E"; look that over and tell us if any particular articles in there that are covered by this $37.65?

A. Well, this has been so lumped up, there are some regular goods in there——

Q. I am asking you if you can tell us from that thing itself, not what you think or anything else.

A. No, I can't very well take it from here.

Q. Did you make a memorandum of those articles of May 12th at any time?

A. I did.

Q. If you saw that memorandum could you refresh your memory from that?

A. Yes, I could; it was made to Mr. Lloyd.

Mr. ULRICH: If Your Honor please, I have permitted all sorts of immaterial, irrelevant and incompetent evidence to go in here; I want the jury to have everything; I want the jury now to have the benefit of this man's honest recollection as he

(Testimony of William E. Miles.)

sits on the witness stand; but when it comes to the point when we're proceeding to take his own memoranda for the purpose of refreshing his recollection when it does not appear his own memory has been exhausted, I object. I do object to this witness volunteering as to any former written matter which is not proper evidence in the case, or refreshing [324] his recollection from any such documents as counsel is now about to show him.

The COURT: Whether a memorandum would be admissible or not would depend upon when and why it was made.

Mr. MOORE: We are not seeking, Your Honor, at all to introduce any memorandum; all we're seeking to do is refresh his recollection. As I understand it, a memorandum used to refresh his recollection is not evidence. The only purpose of the memorandum is to refresh his recollection.

Mr. ULRICH: (Argument).

The COURT: As the Court understands the statement of the evidence, this witness has testified that he made a memorandum on a check stub whereby is stated there was $37.65, if I remember correctly, of items that were erroneously included in a former invoice, that they are together at this time, that he cannot from his examination of a certain exhibit tell just what those items were but that he did make a memorandum of what they were.

Mr. MOORE: Have you any individual recollection at this time as to any of the items which went to make up this $37.65?

A. Yes.

(Testimony of William E. Miles.)

Q. Well, let us have what you know of those items.

A. That was the item of 500 oysters, for seventeen dollars and some odd cents; then there were items of candies, and nuts, and raisins, which according to regulations is permissible to be purchased out of the ration fund or the mess fund of the organization, but I checked that out and left just exactly the items which were not supposed to be [325] charged to the mess fund, and that totaled $37.00. What these particular amounts are I have no recollection, but I know that I admitted the items of raisins and nuts and candies, and so on; but the items that were supposed to be of 500 oysters was supposed to have been for flowers, $17.00, that's one item, then there was an item supposed to have been for two boxes of apples, it was raised to six for the purpose of balancing the total amount of the bill so that it would equal the original claim; what that amounted to I didn't know. Then there was several other items, like the 400 pounds of pumpkin, and little articles were deducted from that to make up this $37.00 which was actually an improper claim against the government fund.

The COURT: Were those items called to the attention of the defendant Lee Chong at the time?

A. Yes sir. It was an agreement between he and I and his man at the office, Your Honor, that these be deducted from his next months bill. And all of

(Testimony of William E. Miles.)

that was reported in my final report to Mr. Lloyd, who was the administrator and purchasing and contracting agent of the E. C. W. in Honolulu.

Mr. MOORE: Do you recall, Mr. Miles, the occasion when this bill of $454.10, which is United States Exhibit "H", was paid?

A. In October, I think, the 12th——

Q. I am asking you for the occasion; I don't care about the date. Do you recall the occasion?

A. Yes.

Q. Who was present?

A. When the bill was paid?

Q. Yes. [326]

A. Before that I went to Mr. Lee Chong to pay him the bill.

Q. I mean, when it was paid.

A. It was out at Schofield Barracks; Mr. Mookini, Mr. Lee Chong, Mr. McGregor, Mr. Yates, and myself—Mr. Robert Yates, the new director there.

Q. Did you have any trouble about it?

A. Yes. Mr. Lee Chong refused to accept the check, under advice of someone, the check in payment, and claimed that he had no guaranty of the payment of the $72.50 nor the $37.65 which he claimed was a just claim against the government, being that he had furnished them some goods down there, and that I was leaving the Camp. So I told him, "Well, as far as I'm concerned, the Canteen Fund will take care of this; if you can come out to the Camp I'll take it up with Mr. Yates and that

(Testimony of William E. Miles.)

can be easily straightened out." We made an appointment to go out together, but he went out ahead with Mr. McGregor, and he didn't, however, arrive at the Camp until after I was already there. While I was packing up my belongings—I had some checking up to do with Mr. Yates later—Mr. McGregor and Mr. Lee Chong, joining with Mr. Mookini, went to headquarters. When I arrived there, Mr. Mookini was sitting at his typewriter making out this receipt, and Mr. McGregor——

Mr. MOORE: Indicating United States Exhibit "K"?

A. Yes, Exhibit "K". Mr. McGregor, on behalf of Mr. Lee Chong who was present, dictating the wording of the receipt. I was alongside of Mr. Yates, making my final clearance and check of the property and money of the Camp that I was turning over to him. [327]

Q. All right. Mookini was, as I understand, there at the Camp practically all the time you were?

A. During the period of our service?

Q. Yes.

A. Yes.

Mr. MOORE: At this time, may it please the Court, it's five minutes to eleven; I would suggest a recess, not particularly for the recess' sake but, as I have just informed Mr. Ulrich, I intend to go into another line of examination and expect to make an offer of proof.

The COURT: Before taking a recess, I would like to have one matter cleared up. The witness has

(Testimony of William E. Miles.)

testified to a man by the name of McGregor; who is McGregor connected with—Lee Chong Company, or the C. C. C. Camp; who is he, and what is his connection?

A. He is not connected with the C. C. C. Camp, Your Honor, but he is a visitor or friend of Mr. Lee Chong; he was there at Lee Chong's store at the time I went to pay the bill, and he was out at Schofield Barracks also.

The COURT: Was he employed there?

A. That I could not say; he was advising Mr. Lee Chong, in my presence, as to what his rights were in claiming——

The COURT: Was Mr. Lee Chong there?

A. Yes sir.

The COURT: Were these statements by Mr. McGregor made in his presence and hearing?

A. Yes sir.

The COURT: All of them?

A. Yes sir.

The COURT: The Court will take a short recess at this time, gentlemen of the jury. Be back in the jury box when called.

Mr. MOORE: I think I ought to make my offer of proof in the absence of the jury, and then the jury be excused. [328]

The COURT: Yes; then the jury will be excused until called.

(The jury retire from courtroom).

Mr. MOORE: May it please the Court, the United States Government now proposes to prove

(Testimony of William E. Miles.)

by this witness that out there at the Schofield camp Mr. Mookini frequently used intoxicating liquor, and on numerous occasions in excess amounts of intoxicating liquor; such was the case both on September 1st and upon May 12th. The purpose of the offer of this evidence by this witness is by evidence that is to be connected up with evidence that will follow, to the effect that on the May 12th delivery, which is covered by one of the vouchers here in evidence, there was delivered to the Civilian Conservation Corps by Lee Chong, on his delivery truck, and in his presence——

Mr. ULRICH: Whose presence?

Mr. MOORE: Lee Chong's presence, a box containing 3 bottles of Gin and 3 bottles of Whiskey; that that box was delivered from the mess hall to Bob Mookini then, and that the item $17.50 which appears upon the May 12th voucher is the item covering the liquor; therefore our offer as to the man's use of intoxicating liquor is connected up with what the liquor is for, we feel is relevant and material.

Mr. ULRICH: If Your Honor please, might just as well offer to prove that the man has meals regularly by way of showing that there were some other items of food that were included in these bills; might as well show that he had an automobile, to prove that there was gasoline. All that this evidence is and all it would amount to, even if it were received, would be evidence to the effect that Mr. Mookini, if the evidence were true, had used liquor;

(Testimony of William E. Miles.)

it doesn't begin [329] to prove where he got the liquor, or how he got it, or anything of the kind at all. I submit it would be highly prejudicial in considering the effect the evidence has in and of itself under the guise and truth of evidence proving a fact of delivery of liquor to Mr. Mookini. As I say, you might just as well prove that he wore clothes, or that he did any other things, by way of showing that they were delivered by Mr. Lee Chong. We don't believe that there will be a particle of credible evidence in this record—I say it in all sincerity—when this case closes, showing that there was any liquor delivered by Mr. Lee Chong to that Conservation Camp; and we don't propose, unless we're ruled against by the Court, to have it argued in the case by remote inference through any such evidence as is now offered. I submit it's entirely too light as probative of the delivery of liquor by Mr. Lee Chong to the Camp and to Mr. Mookini, and that it carries such a prejudicial effect in other ways that in view of its remoteness it clearly should not be received by the Court.

The COURT: It is the opinion of the Court that the government is entitled to show if it can that liquor was delivered to this camp by the defendant Lee Sau Chong and charged for in his bills under some other item; but as to whether or not the defendant Mookini or somebody else drank liquor, the Court holds is not competent.

Mr. MOORE: May we have a recess now, Your Honor.

(Testimony of William E. Miles.)

The COURT: I understood we were at recess; that is, the jury was excused.

Mr. MOORE: Yes, the jury was excused.

The COURT: Do you want a recess at this time? [330]

Mr. MOORE: Yes, for a moment.

The COURT: The Court will take a short recess before calling the jury.

(Recess—11:03 to 11:14 a. m.)

Mr. MOORE: Mr. Miles, all this evidence that you've testified to here happened here in Honolulu, City and County of Honolulu, Territory of Hawaii?

A. Yes.

Q. On this Island?

A. On this Island.

Mr. MOORE: You may cross-examine.

Cross-Examination.

By Barry S. Ulrich, Esq.

Q. Mr. Miles, before going into the details of these various transactions that you've testified to, let me just get your position in the Camp. As I understand it, you were what they call the "Camp Director", is that right?

A. Yes, I was.

Q. You were appointed by whom?

A. Well, the recommendation is made through Mr. Lloyd, and appointed from Washington, D. C.

Q. And Mr. Mookini was the Recreation Officer to begin with, is that right?

(Testimony of William E. Miles.)

A. He was known as the Recreation Officer.

Q. You succeeded a Mr. or Major Mahaffy out there?

A. Correct.

Q. When, did you say?

A. April 29th, I think it was. (Witness reaches for memorandum book).

Q. Do you have to refresh your recollection? [331]

A. Well, it was in April, anyway, April 16th, something like that—(witness consults memorandum)—yes, April 16th.

Q. Have you got a memorandum of some of these dates?

A. No, just that, the date of my appointment.

Q. Appointed April 16th?

A. Yes, April 16th, 1934.

Q. When was Mr. Mookini appointed as Recreation Officer out there?

A. He was appointed at the same time as Major Mahaffy and the rest of them, in the early part of January some time.

Q. In other words, he had been there before you came?

A. I joined them January 29th.

Q. Mr. Mookini preceded you as a member of the force out there?

A. According to the payroll, yes.

Q. Well, actually was he there?

A. Yes, actually he was there before me, about two weeks.

(Testimony of William E. Miles.)

Q. Later on you designated that he just acted as, did you say, mess——

A. Mess officer; he was designated by agreement of the officers in the Camp at our general daily council.

Q. That was the designation that you gave him?

A. Mr. Mahaffy, the Camp Director.

Q. Mr. Mahaffy gave him the designation?

A. Yes.

Q. Was his position with the United States changed in any way; did he get any more money for that work?

A. Not at all; it just increased the duties and responsibilities of the office.

Q. In other words, he was assigned to work with the mess?

A. That was the prerogative of the camp director.

Q. And his duties there, as I understood you to say, were [332] to make purchases of goods and materials for the mess, is that right?

A. Making purchases, drawing up the menus.

Q. Now, let's just understand where we stand with reference to this edible and non-edible proposition that's figured so largely in your testimony. As I understood you to testify, you were not permitted to spend out of the mess fund moneys except for foods, is that right?

A. Correct.

Q. Suppose it became necessary from time to time, or did it ever become necessary to get things

(Testimony of William E. Miles.)

for the mess that were not edibles, did that occasion ever arise?

A. Well, that comes out of Camp Equipment; that's purchased through Mr. Lloyd's office.

Q. Well, suppose you ran out of napkins, or if you used napkins or plates or any other thing that was used in connection with the mess, what did you do about it?

A. Crockery?

Q. Anything at all that was not exactly food and yet was used on the table.

A. That was requisitioned from Mr. Lloyd; he makes the purchases through his department.

Q. You would make requisition through Mr. Lloyd?

A. Yes.

Q. I see.

A. Just a minute, Mr. Ulrich. On the question of breakage, the usual military procedure is followed on that; any breakage of crockery is charged up against the one who broke the crockery, against any of the cooks or the boys or the [333] "Kitchen police", whoever it is, and it's collected from them, and the purchase is made from the "Q. M."—Quartermaster—through a regular form of requisition.

Q. In other words, if any of the men broke any dishes they would have to pay for them?

A. Yes.

Q. I believe you testified to the effect that there were various merchants in town that the Camp did

(Testimony of William E. Miles.)

business with; principally you've named Chun Hoon and Lee Chong, is that right?

A. Yes.

Q. You said that the business was carried on with Chun Hoon rather largely until Mr. Mookini became the mess officer there, and after that the business largely diverted?

A. It was around that period; it kept up until about July or August; I remember we had a conference on that.

Mr. MOORE: May it please the Court, I think that Mr. Ulrich is laboring under a misapprehension of the evidence. The evidence is that he purchased from Chun Hoon, who runs the vegetable market as a part of the Army Commissary at Schofield Barracks, and not Chun Hoon down town.

Mr. ULRICH: Well, I don't remember where he was operating, I know it was Chun Hoon.

Mr. MOORE: It was the Commissary at Schofield which Chun Hoon operated as a concession.

The COURT: Well, there seems to be a difference of opinion between the witness and opposing counsel as to Chun Hoon's status before the Court, but I'm not interested in that. It's your understanding, however, that he was part of the Commissary out there? [334]

A. Yes.

Q. He did not run an independent concession?

A. Not at all; he had the special privilege and exclusive concession, with the sanction of the Ha-

(Testimony of William E. Miles.)

waiian Department, either to operate in Schofield Barracks or in town.

Q. Well, he operated as a store, he sold his merchandise, didn't he, just as a matter of having a place where he could sell it at Schofield Barracks?

A. Well, he has his big store in town, but he had all vegetables and fruits and things of that kind at Schofield Barracks, he had a place of business there.

Q. The long and short of it is that you bought some of your foodstuffs from Chun Hoon, and others from Lee Chong?

A. Correct.

Q. Then, I believe you said, that Mr. Lee Chong's part or share of the business increased materially toward the end of the time you were dealing with him?

A. It did.

Q. Did you ever have occasion to examine the difference in prices that were being offered to you?

A. As I said, along about July I noticed that Mr. Lee Chong's claim was increasing. I had a conference of our officers; Mr. Mookini, I had Mr. Cunningham there, and I had my camp quartermaster Mr. Gibson, and Mr. Colman, at our regular officers' meeting at 11 o'clock each day, and I brought up the subject of this increase of purchases. Mr. Cunningham spoke up and said that the reason why that they were purchasing from Mr. Lee Chong was that Mr. Lee Chong was furnishing better quality of foodstuffs and his prices were better; and

(Testimony of William E. Miles.)

Mr. Mookini corroborated that. "Well," [335] I says, "we'll have to be doing business with the Army people here," I says, "they have been good to us and," I says, "we should do business with them, and if we can't get what we want from them then we'll have to look outside." I took Mr. Cunningham with me the following two or three days after that to Chun Hoon's headquarters. I took Mr. Cunningham with me because he was the one that made most of the complaints and he is the chief cook in the Camp. I took him to Mr. Chun Hoon and I told his this: "Mr. Chun Hoon, we've had a number of complaints about your goods and food that are being delivered to the C. C. C. Camp, and we don't get the service. Mr. Cunningham is here and he wants to know if we can't get better service from you; if we can get better service we would like to do business with you." Mr. Chun Hoon said he would look into it and that he promised to give better service. That was all. I came to town, I remember perfectly well Mr. Cunningham coming to town with me; but the purchases continued. Mr. Chun Hoon——

Q. Mr. Miles, are you trying to suggest that there was something reprehensible about giving Mr. Lee Chong the business?

A. Not at all.

Q. Well, what's all this about, then?

A. I am trying to answer your question as to how——

(Testimony of William E. Miles.)

Q. My question merely was this: Did you have occasion to compare the relative prices that were being offered as between Chun Hoon and the Lee Chong Company?

A. Yes, I did. [336]

Q. Was there any difference; was there any possibility of getting a better deal from Mr. Lee Chong than from Mr. Chun Hoon?

A. There was very little.

Q. Wouldn't even a small difference justify the giving of business in one place or another?

A. What's that question again?

Q. Wouldn't even a small difference justify dealing in one place rather than another; assuming you get as good merchandise or better merchandise, wouldn't it be advisable to do that thing?

A. Oh yes.

Q. I understood from your testimony as elicited by your counsel that there was something bad or wrong because Mr. Lee Chong was given more of this business than Mr. Chun Hoon?

A. No, not at all.

Q. All right, there's that phase of it. Now then, Mr. Miles, we come down to a time when you were about to give a Mothers' Day—If Your Honor please, counsel has suggested that Your Honor has suggested that the Court would like to take a recess as near 11:30 as possible.

The COURT: I would like very much to do that.

Mr. ULRICH: This would be a very convenient

(Testimony of William E. Miles.)

time for me to stop my line of cross-examination to recess at this time.

The COURT: Gentlemen of the jury, remember the admonition heretofore given you about discussing this case with anybody or among yourselves. The Court will now take a recess in this case until 9:00 o'clock tomorrow morning; be in your places promptly at that hour.

(Adjourned—11:27 a. m.) [337]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Wednesday, May 15th, 1935; the defendants Robert K. Mookini and Lee Sau Chong being present with their respective counsel; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

The COURT: Do counsel for the defendants so stipulate?

Mr. ULRICH: We will so stipulate.

The COURT: Let the record show that counsel stipulate that the jury are all present. At adjournment yesterday you were in the midst of your cross-examination, Mr. Ulrich?

(Testimony of William E. Miles.)

Mr. ULRICH: Yes, Your Honor.

The COURT: You may proceed [338]

WILLIAM E. MILES under continued cross examination by Barry S. Ulrich, Esq., testified further as follows:

Q. Mr. Miles, as I understood your testimony on your direct examination, it was that, so far as Mr. Lee Chong was concerned, the first time that you had seen him or had any contact with him was on the day before Mothers' Day, when he appeared out there with a lot of groceries, is that right?

A. No, that was not it; I didn't testify to that effect.

Q. Beg pardon?

A. I didn't testify to that.

Q. That was the impression I got. When was the first time you saw Mr. Lee Chong or knew him in connection with this business out there?

A. Well, he came into the Camp to solicit business, calling on Mr. Cunningham some time after we were in camp, when I was still the assistant camp director; and that's when I first met Lee Chong.

Q. Do you remember an occasion when Lee Chong was out there, and there were you and Major Mahaffy and Mr. Mookini, when the matter of Mr. Lee Chong doing business for the Camp was discussed among you there?

A. Yes; that's when I was assistant camp director, and he came down there to solicit business.

(Testimony of William E. Miles.)

Q. And do you recall it being decided among you there that he was to be at least tried out, given some orders, or something of that kind?

A. Correct.

Q. You approved of that at the time, did you not?

A. Well, I had no voice in the matter, that's all; I was [339] assistant camp director at the time; all the officers of the Camp approved of it.

Q. Major Mahaffy was still in charge, and he approved of it?

A. Yes.

Q. So far as the Mothers' Day order was concerned, do I understand your testimony to be that you knew nothing about that Mothers' Day order or the things that were to go in the Mothers' Day order after it had been placed?

A. I didn't testify that way.

Q. Did you know about it before?

A. Yes.

Q. Did you go over it with any other people at the Camp before the order was placed?

A. We discussed the main menu, yes, that we were to have a turkey dinner, I think it was, or fried chicken, or something of that sort.

Q. Now do I understand your testimony, then, to be that, so far as anything on the list of things to be ordered was concerned which was not strictly edible, that is, paper plates or napkins or anything like that, you had no idea that anything of that kind was being ordered, in advance?

A. No sir.

(Testimony of William E. Miles.)

Q. Didn't know it?

A. No sir.

Q. It was quite a surprise when you came to the dinner that Mothers' Day and found paper napkins and plates at the Mothers' Day dinner, is that right?

A. Well, it was no surprise to me.

Q. It must have been quite a shocking surprise, because you said you knew nothing about it and were under the impression it was improper to order such things?

A. I didn't know it was being ordered and charged to the mess, at all. [340]

Q. You didn't know it was being ordered?

A. No.

Q. Did you think somebody was making a present of that sort of thing to the Government?

A. That I don't know.

Q. You were in charge of the Camp, weren't you?

A. I was in charge, yes.

Q. Wasn't it your business to see what was going on there so far as purchases for the mess and other supplies for the Camp?

A. Correct, it was.

Q. What investigation did you thereupon make, upon finding out that these paper plates and napkins were there, as to how they were being charged?

A. I didn't make no investigation of that.

Q. What did you think was going on; did you think somebody was trying to charge something

(Testimony of William E. Miles.)

against the mess that shouldn't be charged against the mess?

A. No, because the officer in charge of the mess was placed there on account of his knowledge of the regulations governing the purchasing of supplies and charging the Government, because he was supposed to have been a reserve officer, quartermaster.

Q. He was there, all right, but you were there also, and you were over him, weren't you?

A. I was, yes.

Q. As I understand it, this day before Mothers' Day, when those groceries came out there Mr. Lee Chong delivered them himself, I believe you said, is that right—you were there?

A. I was in the Camp, yes. [341]

Q. You were there when the load come in, is that right?

A. I believe I was, yes.

Q. Don't you know whether you were or not?

A. Well, I remember talking to him on the opposite side, but I wasn't there in the mess hall or the kitchen when the wagon arrived.

Q. In other words, you didn't see when the things were unloaded?

A. No sir, I didn't.

Q. You talked to Mr. Lee Chong there, did you?

A. I did.

Q. Who else was there?

(Testimony of William E. Miles.)

A. Mr. Cunningham was there for a few minutes.

Q. Mr. Mookini there?

A. No sir.

Q. Mr. Mookini wasn't there. Well, who performed the function of checking over the goods as they came in, to see that they were all properly delivered?

A. I don't know.

Q. You don't know?

A. No, I don't know.

Q. Even now you don't know?

A. Well, Cunningham signed, according to the invoice there; Cunningham receipted for it; whether he checked it or not, I don't know, I can't swear to that.

Q. He was the one who signed for it, signing to indicate that it had been delivered, wasn't he?

A. Yes.

Q. That's something you looked up later, is that the idea?

A. Yes.

Q. As I understand your further testimony, you didn't [342] investigate this matter of the paper plates and napkins and that sort of thing, oysters, until a considerably later time, is that right?

A. There was no necessity of investigating.

Q. And you didn't investigate?

A. I did not.

Q. Until some time in September, I think you said, is that right?

A. It was in the latter part of August.

(Testimony of William E. Miles.)

Q. Well, you remember an investigation that was started down in the office of Mr. Lloyd along about the first of September some time?

A. That was after I had placed the matter before Mr. Lloyd.

Q. Yes, it was after you had placed some other matters before Mr. Lloyd; we'll take that up in just a moment. Was it at that time, or before that time, that you started to investigate so far as this May 12th bill was concerned; when was it?

A. That was in the latter part of August.

Q. What was it that happened in the latter part of August to lead you to investigate this particular bill?

A. Mr. Cunningham came to me and told me, he says, "Captain, that 500 oysters item which you talked so much about and questioned so much about," he says, "I want to tell you it was never delivered," he says, "you were right, those never came in to the Camp." Then I says, "What do you mean, Johnny?" He says, "That was booze that was ordered by Mookini that was brought in to the Camp."

Q. I see; now we're getting down to it. In August of 1934 [343] Mr. Cunningham came to you and told you that the item of oysters had never come in to Camp at all?

A. Had never come in to Camp.

Q. And that it had been booze?

A. Yes, booze.

(Testimony of William E. Miles.)

Q. Whereupon you started the investigation, is that right?

A. Yes, I did.

Q. And you got hold of Mookini and of Lee Chong, did you?

A. Yes.

Q. You were very much surprised, of course, to learn that anything but oysters had been delivered, is that right?

A. Naturally enough.

Q. You had been suspicious of this oysters item for some time, I believe you said, didn't you?

A. I was.

Q. It was your impression that there had been no oysters at that dinner, is that right?

A. Well, when I questioned the first item when this item came I was told it was used for oyster stew.

Q. You testified on your direct examination that someone said that the oysters item represented flowers, did you?

A. Yes; Cunningham, when I asked him about it, he said it was flowers.

Q. Cunningham, when you first asked him, said it was flowers?

A. Yes.

Q. Later on?

A. Later on, when Mr. Mookini came back; that was in July when he was in town—no, that wasn't in July, that was the same month, in May, that's

(Testimony of William E. Miles.)

right, Mookini came to my desk and he says to me, he says, "Captain, this is not for [344] flowers at all, it was for oyster stew; John is all wet", something to that effect; and I took his word.

Q. When was this, now?

A. This was at the end of May or the first week in June, when we were getting ready to pay off our bills.

Q. And before the bills were paid, is that right?

A. Yes.

Q. Before the bills were paid you asked Mr. Cunningham what this was, and he said it was flowers?

A. Yes.

Q. And Mookini said it was oysters?

A. Oyster stew.

Q. Then later on, considerably later on and some time in July, Cunningham came in and said no, that it hadn't even been flowers, it had been booze, is that right?

A. Yes.

Q. Now, you knew that there were flowers out there, didn't you?

A. Sure.

Q. Where did you think those came from?

A. I don't know, until afterwards I found out; we discussed the item of flowers.

Q. When?

A. When the preparations was being made for the Mothers' Day; Mr. Mookini talked about it and we discussed the matter of flowers.

(Testimony of William E. Miles.)

Q. When the preparations were being made for the Mothers' Day?

A. Yes.

Q. What was said about flowers at that time?

A. Well, about having red and white flowers.

Q. How were they going to be paid for? [345]

A. You can pay it out of the Canteen Fund.

Q. Was that what you said at the time, "pay it out of the Canteen Fund"?

A. The mess officer knows about those things.

Q. Who is running the show out there—the mess officer, or you?

A. I am commanding officer, yes.

Q. Did you say anything about how the flowers were to be charged?

A. No, it was not necessary.

Q. As a matter of fact, don't you know you said something about it, and that you were the one who arranged this whole thing?

A. I did not.

Q. Didn't you direct that those flowers be purchased, and that they be listed as "edibles"?

A. No, I did not.

Q. Don't you know that you sent Cunningham in with instructions to tell Lee Chong that you wanted flowers, and that you wanted to list them as edibles?

A. I didn't send anyone.

Q. Don't you know that when the flowers were delivered out there and the bill was first presented

(Testimony of William E. Miles.)

and it was shown to you and you asked what the "oysters" were and you were told that they were the flowers you wanted, you said it was O. K.?

A. No.

Q. You didn't approve at all?

A. No sir.

Q. Mr. Miles, do you recall—would it be fair to say that you have been endeavoring to make things difficult or [346] troublesome for Mr. Mookini for some time?

A. No, not at all.

Q. It wouldn't be fair? It is true, is it not, that you made charges against Mr. Mookini with Mr. Lloyd?

A. I had made four charges altogether; I had reasons for it.

Q. That led to an investigation, didn't it?

A. It all led to the investigation.

Q. Yes, your charges led to an investigation, didn't they?

A. Sure.

Q. And don't you know that the result of that investigation was that you were directed and requested to resign?

A. It was over the question of Mookini being returned to the——

Q. Answer my question. Don't you know that, as the result of the investigation which then started, you were directed and requested to resign?

A. I was not.

(Testimony of William E. Miles.)

Q. It is your testimony that you were not asked to resign as director of that Camp, is that right?

A. I was given the privilege of resigning.

Q. Let's put it that way, given the privilege of resigning.

A. Because I objected to Mr. Mookini coming back into the Camp.

Q. Just a moment. I think we'll have to go back to another incident. Do you remember the occasion of the Junior Police picnic, or something of that kind, that was held out at your Camp?

A. Yes, sure.

Q. Do you remember that a bill for about two hundred and some odd dollars was sent for that material, to the Police Department in Honolulu?

Mr. MOORE: Just a moment. I object to this, may it please [347] the Court, as it has nothing to do with the issues in this case; it is not proper cross-examination, as it is not an explanation or an amplification of any testimony brought out upon direct examination, and it doesn't tend to prove or disprove any of the issues of this case.

(Argument between counsel).

Mr. MOORE: Just a minute, may it please the Court. In order to save time and in order not to get a lot of things before this jury that shouldn't be, I'll ask that the jury be excused and that Mr. Ulrich make his offer of proof so the Court can rule upon it in the absence of the jury.

Mr. ULRICH: That's quite satisfactory, if Your Honor please.

(Testimony of William E. Miles.)

The COURT: Gentlemen of the jury, you will be excused until called, and you will remain out of the courtroom until called.

(Jurors exit from courtroom).

Mr. ULRICH: At this time, if Your Honor please, I offer to show by the cross-examination of this witness—I may have my dates—subject to correction in the dates—some time in the Summer of this year——

Mr. MOORE: Last year.

Mr. ULRICH: This year that we're talking about,——

The COURT: 1934.

Mr. ULRICH: 1934, there was a Junior Police picnic held at the Camp, that a charge for that picnic—they fed some several hundred boys, I don't know just how many it was—was made to the Police Department here in Honolulu, in the amount of some two hundred odd dollars—I don't have the exact figures before me; that that bill was paid—it will appear in the evidence—to this witness by the Police [348] Department in Honolulu, in the amount of some two hundred odd dollars.

Mr. MOORE: $240.00.

Mr. ULRICH: That, following the receipt of that money, this witness did not deposit it; the check was cashed by him; he did not deposit it in the Camp funds, and that it was not deposited in the Camp funds until a considerably later time, some time about the 17th of July; that in the meanwhile

(Testimony of William E. Miles.)

Mr. Mookini discovered or, rather, came to Mr. Miles in the matter of investigating the books there, asking that a voucher be put in for that sum of money that Miles had received; that Mr. Mookini discovered that the money had not been received by the Camp at all, that this man Miles, as we contend, had practically converted the money himself, and then that Mr. Miles, in a desperate effort to get the funds wherewith to meet and replace the money that he had taken or held back in this matter, went to Mr. Lee Chong and tried to borrow $200.00 from him; that he and Cunningham had made several approaches to Lee Chong, and finally met him over here at the Young Hotel and got him down in some Chinese restaurant—I don't know exactly where the place was—and Mr. Lee Chong did lend Mr. Miles $200.00; we will show the promissory note that Mr. Lee Chong got; and that the very next day that two hundred odd dollars was repaid to the Fund and deposited in the Fund out at the Barracks. We will show that Mr. Mookini was threatening to expose Mr. Miles in connection with that transaction, and that Mr. Miles thereupon started these reverse charges against Mr. Mookini which led to his own dismissal when the things were finally investigated. [349] Now, if Your Honor please, I submit that that shows, in the first place, a distinct reason for an animus by the witness toward Mr. Mookini; it explains a great many things so far as what happened after that time was concerned, and

(Testimony of William E. Miles.)

it is directly pertinent as indicating the place that this witness has with reference to these various transactions, and further explains and throws light on this sudden charge, which comes later, against Mr. Mookini, as the witness has said, that fits in right after this check transaction, and it's something which we're entitled to have the jury know, to understand the true relation of the parties in the case, and certainly as going to the credibility of this witness and his interest and bias with reference to the other defendant in the case; he still owes this money to Mr. Lee Chong.

Mr. MOORE: May it please the Court, it's been testified in this case by the witness that he made a charge against Mookini out there; his animus, if any, is shown by that itself, and to bring in something about a Police picnic or a Police whatever you want to call it, has nothing to do with buying vegetables from Lee Chong; and it is only brought in here or attempted to be brought in here for the purpose of prejudice, and it has no place within the issues of this case; it is altogether a separate, distinct thing and has nothing to do whatsoever with this present case; and we submit that no evidence or no cross-examination upon that line should be allowed.

Mr. ULRICH: If Your Honor please, the very purpose of cross-examination is to show bias and prejudice; we're entitled to prejudice the witness if the evidence shows he is prejudiced.

(Testimony of William E. Miles.)

The COURT: It is the opinion of the Court that counsel for [350] the defense does have a right to show prejudice or bias or any matter that bears upon the credibility of this witness, but in order to do so we cannot try another crime. The facts you stated here would constitute embezzlement, a distinct crime under the statutes, one against which the statute of limitations of the United States has not yet run and for which this witness could be put on trial in this court; we cannot try two cases at once.

Mr. ULRICH: If Your Honor please, wouldn't the witness have to claim his privilege against incrimination to take advantage of that other situation; if he does that, I am foreclosed, I can't ask him any questions then.

The COURT: He could in that manner, of course, but he's not obliged to; it would be a constitutional privilege.

Mr. ULRICH: Do I understand that Your Honor rules that I may not cross-examine the witness' misappropriation of funds? Does the Court also rule that I may not examine the witness on the matter of borrowing money, for example, from one of the defendants in this case?

The COURT: Not unless it's claimed that the borrowing had some connection with this case in some manner. If it is intended to show that that borrowing was a mere pretext for covering up a bribe, or something of that kind, it may be permis-

(Testimony of William E. Miles.)

sible; but if it was a bona fide transaction of borrowing and lending, the Court would feel that it was improper.

Mr. ULRICH: Well, I feel that we should be allowed to get this into the record in the form of questions and rulings on those questions. I'll try to make the questions in such form as not to indicate them to the jury; I believe [351] we have an error —of course, that is merely an opinion; but I want to have exceptions taken in the proper way and preserved in the record.

Mr. MOORE: As I understand, may it please the Court, counsel has made an offer of proof, and the Court has ruled that what he intended to prove is not a proper matter to be gone into by this Court. An exception to that ruling is sufficient, and any questions to be asked of this witness have already been ruled on by this court to be improper; so that to ask questions and have a ruling on each and every question would be farcical. I submit that the record as it stands now is ample and sufficient.

Mr. ULRICH: Of course I'll take exception to the Court's ruling in refusing to allow the offer of proof.

The COURT: Let the exception be allowed; and future questions will be ruled upon as asked.

Mr. ULRICH: Yes; I believe that the reason for the ruling should be indicated to the jury; otherwise the jury may get the idea that I was trying to go into a matter totally irrelevant; if they know it's

(Testimony of William E. Miles.)

a matter of investigating a separate crime, then my position is—it would be the same thing as requiring a witness to claim his privilege.

Mr. MOORE: (Further argument).

The COURT: This witness has already testified that he preferred charges against defendant Mookini, and the Court will permit you to show any possible prejudice, if any exists; but we can't try a second offense here at this time. You may call the jury in, Mr. Bailiff.

(Jurors return to the courtroom).

The COURT: You will proceed, Mr. Ulrich.

[352]

Mr. ULRICH: Mr. Miles, I believe that you testified to the effect that at this later time that you took up this investigation, after you had already paid Mr. Lee Chong the bill which represents and covered that Mothers' Day bill, you went over the bill and check off certain items that you felt should have been charged against the Mess Fund, and charged that back against Mr. Lee Chong, is that right?

A. Correct.

Q. So that we may understand what this is all about, I show you first United States Exhibit "B", and the United States Exhibit "C"——

Mr. MOORE: Those are one and the same, Mr. Ulrich.

(Testimony of William E. Miles.)

Mr. ULRICH: I am just going to indicate that.

Q. Calling your attention to the fact that, so far as the typewritten matter appearing upon the two exhibits are concerned, that appears to be an original and carbon copy of the same bill, is that correct?

A. Correct.

Q. Now I call your attention to the United States Exhibit "D" and United States Exhibit "E", and to a similar situation with reference to that, namely, that the one is apparently, so far as the typewritten matter is concerned, a carbon copy of the other?

A. Correct.

Q. So that we may use for the purpose of this examination, for the moment, the two originals, as we may call it, Exhibits "B" and "D". Now, I understand your testimony to be that, so far as Exhibit "B" is concerned, listing such things as paper plates and napkins, one item of paper plates [353] and the other item of napkins, you never saw or heard of that——

A. (interrupting): It never came to me——

Q. (continuing): until away along in September some time, is that right?

A. Yes, correct.

Q. What you did see when you paid your bill was Exhibit "D", is that right?

A. Yes.

Mr. ULRICH: So I can get this jury so they can understand—I don't believe these have been shown or read to the jury—if I may just indicate a

(Testimony of William E. Miles.)

few things about these exhibits to this jury. We have in the first place, if you notice, an Exhibit "B", including, as you'll see, an item for oysters, also including an item of 200 paper plates, 1,000 paper napkins, and certain other items, through which lines have been drawn—strawberries, crabs, limu, opelu, and so forth—totaling $231.00; that's the bill that this witness says he never saw until along in September some time. On the other hand, we have "D" here, for which the amount of money it says, so far as payment of money is concerned, is $231.00, excepting that there does not appear on the bill paper plates and paper napkins; and, further, that these items, as you will see, through which lines have been drawn—paper plates and paper napkins and other things there which, for some reason or other were changed into other items, the paper plates and napkins became "carrots" or something of that kind, and the strawberries became "grape fruit"—I don't know just exactly what the changes were—calling your attention, however, to the fact that a considerable number of those things that were changed were edibles; [354] whereas, so far as I can see, only two items on the whole bill, totaling about $4.50, were non-edibles—paper plates and paper napkins; you can verify that by a more careful examination of the documents later on.

Q. Now, I understand your testimony to be, Mr. Miles, that you took this bill, when you were endeavoring to right things with the Mess, and endeavored

(Testimony of William E. Miles.)

to take out those items that were not edibles, in other words, those items which in your understanding could not properly be charged against the Mess Fund, is that right?

A. Correct—not these here.

Q. You endeavored to charge back against Mr. Lee Chong—perhaps I should say, those items appear to——

A. That was in October.

Q. I thought it was September; was it October——

A. Latter part of September.

Q. And then you took the original bill of the goods delivered and from that picked out those items which you felt did not represent edibles but represented something which could not properly be charged against the Mess Fund, and made up an item of some $37.00 which you charged back against Mr. Lee Chong?

A. I didn't take it from here at all; I took it from Mr. Lee Chong's own office in the presence of his clerk, who took it off himself; this never came in to my sight at all, I never saw these.

Q. Never saw that, even in October?

A. That came through Mr. Lloyd's office.

Q. What did you see in October?

A. This is what I saw in October, this one here (indicating); [355] these are all my check marks and notations with question marks here (indicating).

(Testimony of William E. Miles.)

Q. In other words, you refer to the document of which the typewritten matter is a carbon copy of the document I have been referring to, "B"?

A. Yes sir.

Q. You took, then, this Exhibit "E" and you checked off the items which you felt——

A. I first took it to Mr. Lloyd.

Q. First took it to Mr. Lloyd?

A. Yes, I took it to Mr. Lloyd's office and told him, I checked the item of 500 oysters, I says, "Jim, I have recently discovered that this 500 oysters is not true, I understand it's liquor brought in to the Camp".

Q. All right; what else did you say?

A. Then he told me, "What do you want me to do?" I says, "I make my report to you about it;" and he started his investigation.

Q. Now will you get back to my question?

A. Then——

Q. Go ahead.

A. Then he wanted me to put my report in writing, and my investigation and recommendations, which I did; and I think this—Jim Lloyd sent Mr. Matson, I think—I'm not sure—someone down to Mr. Lee Chong; Mr. Lee Chong came up, and through Mr. Lee Chong they got the invoice.

Q. Signed by Cunningham?

A. Yes; he showed me this (indicating).

Q. That's the one you never saw?

A. I say I got that through Mr. Lloyd; it never came into [356] my possession at all.

(Testimony of William E. Miles.)

Q. I'll take you to Mr. Lloyd's office in a minute. Just now let's go to this matter of the way in which you charged back this $37.00 item to Mr. Lee Chong. As I understand and as you said, this copy only referred to the carbon copy, is that right?

A. Yes.

Q. That was the copy—where did you get that copy?

A. That was in the Camp files.

Q. Well, of course, on that copy there doesn't anything appear at all excepting the items as they were billed, not showing the non-edibles, is that right; there's no item of non-edibles there?

A. Yes.

Q. Aren't you referring to the other carbon copy there?

A. No, this is the one.

Q. How could you from that copy pick out the edibles; how is it possible they don't appear?

A. I took this down to Mr. Lee Chong's office myself, and I says, "What is this 500 oysters anyway, Lee Chong; some say it's flowers and some say it's not?" So I sat there and he started talking with me and he said it was flowers. I says, "I understand there were other items; what became of the candies and other things that was used at the Camp?" That's when I started asking questions; then he told me what had been done, that Mr. Mookini and Cunningham came in to his office and brought the original and told him to make the

(Testimony of William E. Miles.)

changes; and that is the original on which the lines are made; and he told me that Mr. Mookini scratched those out. [357]

Mr. MOORE: That's referring to what, Mr. Ulrich?

Mr. ULRICH: He's referring now to Exhibit "B".

Q. And it's now your testimony that Lee Chong told you that Mookini had drawn those lines?

A. And Cunningham; and Mookini was the one that directed him to scratch out those items.

Q. And Mookini was the one that drew those lines?

A. Yes.

Q. That's what Lee Chong told you?

A. Yes, in the presence of his Filipino clerk.

Q. That was at the time you were endeavoring to find out the items that were improperly charged against the Mess Fund, is that right?

A. Yes.

Q. Then you took this bill—did Mr. Mookini show you what the other items had been, about paper napkins and all that;——

A. Mr. Mookini never showed——

Q. I mean, Mr. Lee Chong.

A. He had a memorandum, he had a sort of a sales book, from which he——

Q. I wish you would take this bill, Mr. Miles; you've got here a bill as presented, I mean, having which you could check certain items; did you make any check on that bill?

(Testimony of William E. Miles.)

A. Not at all.

Q. You understand there's nothing there but paper plates and napkins?

A. This was all in Cunningham's possession and turned over to Mr. Lloyd, and Lloyd turned it over to me [358]

Q. Do I understand your testimony to be that your $37.00 item was not taken from this bill at all?

A. It was taken from Lee Chong's office.

Q. You said on your direct examination that it included $17.50 which was for the oysters item?

A. I have a copy of my letter to Mr. Lloyd, which is with the investigator, which will show you those items.

Q. I'll be very glad to look at it; may I have the letter?

Mr. MOORE: I haven't the original. That is the copy of the letter to whom?

A. Lloyd.

(Mr. Moore hands document to Mr. Ulrich).

Mr. ULRICH: I'll look at this later; I haven't time to look it over now.

Q. Now, I understand your testimony to be that you took this $37.00 item from an independent memorandum that was given to you by Mr. Lee Chong, is that right?

A. Yes, from his own record in his office.

Q. You couldn't take this document here, then, and say it was $17.50 for the oysters item and that paper item or any other item?

A. I couldn't pick it out now.

(Testimony of William E. Miles.)

Q. Is it your understanding that it does or does not appear on this original invoice as sent out there to your Camp?

A. I don't know unless I refer to that.

Q. To what?

A. To that report of mine.

The COURT: Pardon me, Mr. Ulrich, but some of your examination has not been intelligible to the Court, and I am [359] certain it will not be, in the record. You referred to "this invoice", "this bill", "this carbon copy", and "this original", without identifying it as Exhibit so and so; and it's not getting into the record.

Mr. ULRICH: Yes, I have been careless, Your Honor.

The COURT: Mr. Miles, I want to call your attention to something; you've frequently shook your head "yes" or "no"; that doesn't get into the record; you'll have to say either "yes" or "no"—answer in words, so that the Reporter can get it.

A. I will do so.

Mr. ULRICH: The document to which I was referring—for the purpose of getting it into the record—when I asked you the question if you had taken any of the items which made up your $37.00 charge back against Mr. Lee Chong from that document, was United States Exhibit "C". I understood your testimony to be that you had not?

A. I had not.

Q. And that equally applies to the other exhibit, of which the Exhibit "C" is a carbon copy, so far

(Testimony of William E. Miles.)

as the typewriting is concerned, namely, United States Exhibit "B"; is that right?

A. Correct.

Q. Now, do I understand your testimony to be, Mr. Miles, that at the time that you were in Mr. Lee Chong's office, in the presence of his clerk or bookkeeper, and went over this list and picked out $37.00 odd dollars worth of merchandise that was to be charged back to Mr. Lee Chong, Mr. Lee Chong agreed with you that those items should be charged back to him? [360]

A. Correct, yes sir.

Q. In other words, Mr. Lee Chong at that time indicated to you that he was willing to waive the charge, if you might say, as to the $37.00 worth of merchandise?

A. No, he wasn't; he wanted to know how he was going to get his money.

Q. What did you mean by saying he agreed it was to be charged to him?

A. He agreed it was to be deducted.

Q. Deducted from what?

A. From the October payment.

Q. Well, wasn't that provided it was to be taken care of in some other way? Of course it wouldn't make any difference to Mr. Lee Chong how he was paid so long as he was paid, you understand?

A. Yes.

Q. Do I understand that it was to be taken care of and deducted from one bill and not taken care of in any other way?

(Testimony of William E. Miles.)

A. Well, the deduction was made from the Federal fund, from the Government money, but he could be paid out of the Canteen Fund.

Q. Of course Mr. Lee Chong didn't care what fund he was paid out of?

A. No, he wouldn't care, certainly not.

Q. But do I understand he agreed with you?

A. He agreed with me.

Q. That you should deduct this money?

A. Correct.

Q. From the money which you were about to pay to him, without any undertaking on your part that he was to be paid [361] that money in any other way?

A. It was understood he was to be paid out of the Canteen Fund.

Q. So that, all that Mr. Lee Chong agreed at that time was that he should make adjustment in his bookkeeping so that this bill should be paid one part out of the Canteen Fund and one part out of the director's fund?

A. Out of the Canteen Fund you can buy most anything, you can buy a house and lot, or an automobile; the government fund is restricted; and then when that matter was made known to him he agreed to have it deducted from his October bill, which was September payment paid in October.

Q. Please answer my question and confine yourself to the question, and that is, that the substance of the agreement at the time was merely, not that

(Testimony of William E. Miles.)

the bill should be waived or any part of it not paid——

A. Certainly not.

Q. (continuing): but that part of it should be paid out of one fund and part out of another; is that true?

A. It was understood that Mr. Lee Chong was going to be paid for all that he had furnished the Camp, but——

Q. Won't you please answer my question. Was it part of the agreement that he was to be paid one part of the bill out of one fund and one part out of another?

A. Yes.

Q. That's all I want. Now, to come down to the September episode. As I understand it, along about the middle of August or perhaps the first of August, early in August it was decided that there was to be held a luau——

A. A farewell. [362]

Q. Somewhere near the first of September, is that right?

A. On Labor Day.

Q. That was September what, do you remember that? It doesn't make a great deal of difference, but if you do remember, all right.

A. It was held on Saturday instead of Monday, that's all.

Q. On Saturday, Labor Day?

A. On Saturday, the 1st. Labor Day was on a Monday.

(Testimony of William E. Miles.)

Q. The matter of buying materials for the luau, I suppose, was discussed—or was it discussed?

A. Discussed.

Q. Between yourself and Mr. Mookini and Mr. Cunningham?

A. And the other officers.

Q. And the other officers. Again I ask you, in connection with these discussions which preceded the placing of the orders for the September luau, was anything said about the possibility of requiring any kind of purchases which would not be strictly edibles and chargeable against the Mess Fund?

A. There was.

Q. What was said in that connection?

A. Well, there was the paper bowls, and there was the paper plates, and all of that was discussed, and we agreed that that could be purchased and charged to our Canteen Fund.

Q. You agreed that that should be purchased and charged to the Canteen Fund?

A. Charged to the Canteen.

Q. Whom did you have that agreement with?

A. Amongst ourselves. [363]

Q. That is, you and Mookini and Cunningham?

A. They were all there, yes; that's the only way to pay it.

Q. You agreed that there were certain items which were to be purchased, which would not be edibles, but they should be purchased and charged to the Canteen Fund, is that right?

(Testimony of William E. Miles.)

A. Whatever we couldn't charge to——

Q. Just a moment; did you imagine this made any particular difference to Mr. Mookini whether it was paid out of the Canteen Fund or the Mess Fund?

A. Did it make any particular——

Q. Would he have any reason for charging it to the Canteen Fund rather than the Mess Fund; can you see any logic about it?

A. I don't know about it, I don't know his reason.

Q. So far as Mr. Lee Chong was concerned, he wouldn't care whether it was paid out of one fund or another fund, so long as it was paid?

Mr. MOORE: I object to that as calling for a conclusion of the witness. What this witness believes is not evidence.

Mr. ULRICH: I have a right, if Your Honor please, to show the nature of these transactions. I submit this is the most ridiculous charge that has ever been placed against two men in a court of law.

Mr. MOORE: May it please the Court, I'll ask that this statement be stricken and that counsel be instructed to refrain from making any such remarks. This was presented to the Grand Jury, and the Grand Jury returned a true bill of indictment.

[364]

Mr. ULRICH: Yes, and on what kind of evidence!

Mr. MOORE: On perfectly good evidence.

(Testimony of William E. Miles.)

Mr. ULRICH: If Your Honor please, I think I have a right to comment on all features of the case from time to time; I don't think it's unreasonable to make a comment of that kind. I do submit that the case is a case which has simply no foundation under any substantive construction of the law.

The COURT: That will be for the jury to determine from the evidence.

Mr. ULRICH: Certainly, Your Honor. (Further argument)

The COURT: What is the question, Mr. Reporter?

(Reporter reads question marked *, page 134)

Mr. ULRICH: Now that just asks the witness to indicate if he can see any motive Mr. Lee Chong would have in trying to fabricate the documents unless he was prompted to do so by somebody in authority.

The COURT: You may answer the question.

A. I don't know.

Mr. ULRICH: If Your Honor please, it's 10 o'clock; I'd like to take a recess at this time.

The COURT: Before taking a recess the Court would like to ask this witness one or two questions. Who had charge of this Canteen Fund?

A. The Camp Director; I had charge of the Canteen Fund.

Q. Were payments made by check the same as upon the subsistence fund?

(Testimony of William E. Miles.)

A. Yes sir. There's a little store there for the convenience of the men; it's outside of government activities.

Q. You drew all checks on the Canteen Fund yourself?

A. I drew those; I signed those checks. [365]

Q. That fund belongs to the men of the Camp—a sort of community affair?

A. Yes, a sort of community interest.

Q. The Government had no interest in that?

A. No sir.

Q. The only Government funds were in this Mess Fund?

A. Mess Fund, yes sir.

Q. You as camp director had charge of both funds?

A. Yes sir.

Q. And made payments from both funds?

A. Yes sir.

The COURT: The Court will now take a short recess.

(Recess—10:01 to 10:10 a. m.)

Mr. ULRICH: Mr. Miles, was it ever your practice to charge to the Mess Fund in the first instance articles which were not strictly or, as you might possibly say, properly chargeable against that Fund, with the idea of reimbursing the Fund at a later time?

A. No.

Q. Let me call your attention to what I have in mind—and this is on another line entirely, as you

(Testimony of William E. Miles.)

will instantly see. In the matter of this Junior Police picnic that was held——

Mr. MOORE: May it please the Court, the Court has already ruled——

Mr. ULRICH: I'm not going into this for the purpose of following up along the line I had originally intended, if Your Honor please, at all. This is for the purpose of showing a charge made against the Mess Fund which was entirely outside of Government purposes, without any impropriety in the first instance, and a reimbursement of the Fund—an idea which I have a perfect right to develop.

Mr. MOORE: We object to that question, may it please the [366] Court; it's a matter on which this Court has already ruled.

Mr. ULRICH: This has nothing to do with the matter the Court ruled on.

The COURT: If the purpose is to determine the method of how the accounts were kept, it will be allowed, and for that purpose only.

Mr. ULRICH: Yes, Your Honor.

Q. It is true, is it not, that there was a Junior Police picnic out there—when was it?

A. Is this a new question?

Q. A new question, yes.

A. Yes, there was.

Q. When was it?

A. On the Fourth of July.

Q. You fed a large number of these Junior Police boys, is that right?

(Testimony of William E. Miles.)

A. About 1,100 of them.

Q. And the money to feed them with was paid out of the Mess Fund, was it not?

A. It was paid out, yes, after Mookini charged it to the Fund; yes, it was paid out of the Mess Fund.

Q. After Mookini charged it to the Mess Fund?

A. Charged it to the Mess Fund, yes.

Q. Who made the payment out of the Mess Fund?

A. I did.

Q. Didn't you know what you were doing when you paid that money from the Mess Fund?

A. Well, he had it charged to the Mess Fund.

Q. Assuming he had put it down to the Mess, if it were not properly payable out of the Mess Fund, you could go right ahead and pay it? [367]

A. No, you couldn't.

Q. Why did you do it?

A. Because it was charged to the Mess Fund; and the Post Exchange and the Commissary, refusing my rendering any separate bill for Mr. Mookini, all remarked to me when I questioned about it he was instructed to keep these purchases separate.

Q. Do I understand your position now to be—your contention—that it would be improper to pay for the Junior Police picnic out of the Mess Fund and reimburse the Mess Fund out of a check from the Police Department?

A. No, that wasn't improper at all; that's customary.

(Testimony of William E. Miles.)

Q. Then what are you talking about? You say you only paid the money out of the Mess Fund because Mookini had it listed or charged against the Mess Fund?

A. Because it was charged; there was no necessity for charging it; we could have paid it direct with a check.

Q. Well, whether he charged it or not, you paid it out of the Mess Fund, didn't you?

A. Yes.

Q. And you considered that a perfectly proper thing to do, didn't you?

A. They do it every time, and it's proper.

Q. And then you pay the Mess Fund back at a later time?

A. At any time, yes.

Q. Now, take the matter of the non-edibles that were charged and paid out of the Mess Fund, so far as Lee Chong's first bill was concerned would there be anything quite improper about paying it out of the Mess Fund and then reimbursing the account from the Canteen Fund at some later time; would that be wrong, any difference at all between [368] whether he advanced moneys for wood or for a Junior Police picnic?

A. No, there's no difference.

Q. In other words, it was a customary thing to do, isn't that true?

A. It's customary, it's being done all the time.

(Testimony of William E. Miles.)

Q. Now, to come down to the September luau. You had just testified before we took the recess, as I understood it, that the matter of the non-edibles to be used in that luau had been discussed and it had been agreed that they should be charged against the Canteen Fund, is that right?

A. Yes; whatever is not chargeable—there's a lot of things, like wood and some wire netting required for the imu, and ti leaves, that was not edible and that couldn't be charged.

Q. The idea was, that had to be paid out of the Canteen Fund?

A. Out of the Canteen Fund.

Q. Then when you got the bill you didn't find any of these things on the bill, did you?

A. No.

Q. Did that surprise you at all?

A. No, it didn't surprise me; I asked for the items myself; "where is the things to be charged, and the bills for the ti leaves and the paper bowls and paper plates?"

Q. They found out that somebody had had Lee Chong put them in the former bill you paid, is that right?

A. Found out it had been charged under separate items there, items in the original bill submitted to me; and I called up Lee Chong and went down to his office and had them checked over. [369]

Q. So that—referring now to United States Exhibit "G"—that represented the bill as it was originally presented, is that right?

A. Yes.

(Testimony of William E. Miles.)

Q. Referring now to United States Exhibit "H" and Exhibit "J", which really have to be considered together, the Exhibit "H" representing the edibles which were still remaining charged against the Mess Fund after the readjustment, and Exhibit "J", the non-edibles which were thereupon charged against the Canteen Fund, is that right?

A. Yes, sir.

Q. The total being the same, $526.60?

A. $454.10 plus $72.50 will equal $526.60, correct.

Q. So that Exhibit "G" is, so far as the amount is concerned, the same amount as the two exhibits "H" and "J", the exhibits "H" and "J" representing a breaking down—if we may call it that way—of Exhibit "G" and a separate listing of the non-edibles and the edibles, the one being billed against the Canteen, and the other against the Mess Fund?

A. Correct.

Mr. ULRICH: Just so the jury will understand; this is what they call the "second count" of the indictment. Here is the bill as originally presented, $526.60; all of those items there would appear to be edibles. Then we have Exhibits "H" and "J", which represent the same amount, that is, the same total, being $526.60, broken up into $72.50 worth of wood and wire and bags and cigarettes and other things that were not edibles, and $454.10 of edibles.

Q. So that there was no change, was there, Mr. Miles, in the total amount that was charged? [370]

A. No, there was no change.

(Testimony of William E. Miles.)

Q. The difference being only that after the readjustment the one item was charged against the Canteen and the other against the Mess Fund?

A. Correct.

Q. And the bill that was actually paid out of the Mess Fund was only the $454.10, being Exhibit "H", is that right?

A. Correct.

Q. And the bill for $72.50, which was to have been paid out of the Mess Fund, has never been paid at all?

A. I don't know.

Q. Nor has Mr. Lee Chong ever gotten back this $37.00 that was charged back against him—or do you know?

A. I don't know.

Q. Do you know anything about the October bill which came after that, whether he was paid his October bill or not?

A. I don't know.

Q. If it's true that those bills haven't been paid, then Mr. Lee Chong is just out of pocket that much money, that would be obvious, wouldn't it?

A. Yes, that's obvious.

Q. And they want to sell him to jail for it! When did I understand you to say that this readjustment was maid, that is, the breaking down of the original luau bill; when were those two bills——

A. At the end of the month, the latter part of September, between the middle or the second or

(Testimony of William E. Miles.)

third week of September, towards the end, that was towards the end of the month.

Q. I'll ask this question and take the Court's ruling on it: [371] Is it not true that you borrowed $200.00 from Mr. Lee Chong?

Mr. MOORE: Now, may it please the Court, I object to that as endeavoring to get something in here that has got nothing to do with this.

Mr. ULRICH: That's a perfectly proper question, if Your Honor please.

The COURT: The Court will permit the question as long as it does go to the fact of borrowing.

A. I did.

Q. And you gave him your promissory note for $200.00?

A. I did.

Q. And you still owe him that money?

A. I do.

Q. This note is dated July 16th, 1934?

A. Correct.

Mr. ULRICH: The Court will not allow me to indicate the circumstances under which that note was made?

The COURT: The Court believes it would be improper and immaterial.

Mr. ULRICH: I'll take another exception to the Court's ruling.

The COURT: Exception is allowed.

Mr. ULRICH: Mr. Miles, you are one of the defendants in this case, aren't you?

A. I am.

(Testimony of William E. Miles.)

Q. Have you discussed your testimony, the testimony in evidence that you were going to give on this witness stand, with the prosecuting attorney before you took the stand?

A. Before I took the stand?

Q. Yes.

A. No.

Q. He had no idea what you were going to testify before you took the stand? [372]

A. When I was subpoenaed I consulted my attorney, "Shall I appear?" He said, "Yes"; and I came up and reported to the attorney, and he asked me if I had my subpoena; I said, "Not yet"; he says, "You can get it from the United States Marshal's office."

Q. I understand that you have not talked over this case with Mr. Moore, Mr. Stainback, or with anyone connected with the United States Attorney's office?

A. I have talked over this case with them.

Q. You have?

A. Back in October, after my resignation.

Q. But I mean, following your taking the stand here and after you were indicted in this case, you have not discussed the facts of this case with the prosecuting attorney's office, is that right?

A. I didn't quite get you as to discussing this case, Mr. Ulrich.

Q. There's nothing particularly difficult about understanding that.

A. All I was notified was I was to be a witness.

(Testimony of William E. Miles.)

Q. Yes, and did you talk over the facts of the case before you took the stand, with the District Attorney's office?

A. Not at all.

Q. You didn't?

A. I went before the Grand Jury.

Q. And since you have been indicted in this case and before taking the stand here, you didn't talk about the case at all with Mr. Moore?

A. I never went into a discussion of the details of the [373] testimony or anything.

Q. And you had no kind of understanding as to any immunity that might be given you by virtue of the testimony?

A. Not at all.

Q. As far as you know, you are still going to be tried under the indictment?

A. I do.

Q. For the crime of participating with these people in this juggling of the Mess Fund against the Canteen Fund, or anything else?

A. Whatever the indictment is, Mr. Ulrich.

Mr. ULRICH: That's all.

Redirect Examination

By WILLSON C. MOORE, Esq.

Q. Mr. Miles, this Canteen Fund that you speak of, how is that created?

Q. Well, that was created due to the prohibition of the Army department for the men going into the Canteen or the Post Exchange and buying, and we

(Testimony of William E. Miles.)

had to arrange some way for the convenience of the boys in the Camp; and we all decided, Major Mahaffy and all of us decided to have a little store there, and Mr. Colman, the camp clerk, was appointed as the Canteen officer, and he assumed the responsibility of securing the supplies from the Post Exchange, and we in turn sold it at the same price to the boys, for their convenience.

Q. You sold it at the same price that you bought it—any discount?

A. We got a little discount in some instances—2½ or 3 per cent discount, and 5 percent in some instances. [374]

Q. Then the Canteen Fund was built up from the discounts that you got?

A. Yes.

Q. That Fund was for whose use?

A. For the general convenience of the boys on materials that we could not purchase out of Government funds.

Q. In other words, the funds derived from that were to get things for the boys that they couldn't otherwise get?

A. Well, officers also, and the boys.

Q. Now, calling your attention to United States Exhibit "J", it being that exhibit that covers the various items for the luau of September 1st and also, I take it, an item of cigarettes and cigars and flower leis?

A. Yes.

Q. Who were the leis and the cigarettes and cigars for?

(Testimony of William E. Miles.)

A. I don't know; I noticed there were leis there used by some of the guests; but the cigarettes and cigars I did not see at all.

Q. They did not go into the Canteen for sale, did they?

A. No sir.

Mr. MOORE: That's all.

Recross Examination

By BARRY S. ULRICH, Esq.

Q. Do I understand that there weren't any cigarettes or cigars there, or you don't remember seeing them?

A. I never saw any of them.

Q. Never saw any of them?

A. Any of them.

Q. People weren't smoking cigars and cigarettes?

A. In the first place, I wasn't at the opening or beginning [375] of the luau; I came in later.

Q. You didn't see anybody smoking cigars and cigarettes?

A. No sir.

Q. You seriously say that you didn't see anybody smoking cigars and cigarettes?

A. I mean passing around any boxes of cigars and cigarettes; they were all smoking.

Q. In other words, you don't know where the smokes came from?

A. I don't know.

(Testimony of William E. Miles.)

The COURT: Were cigarettes and cigars sold regularly at the Canteen?

A. Yes sir.

Mr. MOORE: And those cigarettes and cigars were purchased from the Army Commissary?

A. From the Post Exchange.

Mr. MOORE: That's all.

JOHN EDWARD CUNNINGHAM

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. John Edward Cunningham.

Q. Were you ever connected with the Schofield camp of the Civilian Conservation Corps?

A. Yes sir.

Q. When?

A. The first of March, when the Camp opened up, sir. [376]

Q. In what year?

A. Last year, sir.

Q. 1934?

A. 1934.

Q. In what capacity were you connected with that Camp?

A. First Cook.

(Testimony of John Edward Cunningham.)

Q. Do you know Mr. Mookini and Mr. Lee Chong, the defendants in this case?

A. Yes sir.

Q. You were also a defendant, Mr. Cunningham?

A. Yes sir.

Q. And have entered a plea of guilty?

A. I did, sir.

Q. When you were first employed at the Camp of the Civilian Conservation Corps at Schofield, who was in charge of that camp?

A. Major Mahaffy.

Q. Who was directly under him, if you know?

A. Captain Miles and Mr. Mookini.

Q. What was Mr. Mookini's duties or what was his office when the Camp first started?

A. Recreation Officer then.

Q. Do you know a Mr. Gibson?

A. Yes sir.

Q. Was he connected with that Camp when you were first employed?

A. Yes sir.

Q. In what capacity?

A. Quartermaster and Mess Officer.

Q. Was Mr. Gibson your immediate superior?

A. Yes sir.

Q. Now, as chief cook what were your duties with reference to the procuring of food for the mess? [377]

A. Well, when I first went out there they told me to make out a list of what we wanted from the

(Testimony of John Edward Cunningham.)

quartermaster and from the vegetable dealer, Chun Hoon, out there.

Q. And did you make such a list?

A. I did, sir.

Q. What did you do with it?

A. I turned the list over to Mr. Gibson.

Q. Were the goods you requested later received?

A. Yes sir.

Q. When the goods were received, were there any receipts of any kind given for them?

A. Well, Mr. Gibson kept the receipts; he signed for everything while he was there.

Q. Was Mr. Gibson ever succeeded as Mess Officer?

A. Yes sir.

Q. By whom?

A. By Mr. Mookini.

Q. When was that, if you know?

A. The following month, I believe, about the first week.

Q. Well, approximately what month was it when Mookini succeeded Gibson, if you know?

A. About the first week in April.

Q. During the time that you were chief cook in Gibson's regime, where were the fruits and vegetables purchased?

A. They were purchased from Chun Hoon.

Q. And do you know where Chun Hoon's establishment was located?

A. I did, sir.

(Testimony of John Edward Cunningham.)

Q. Where?

A. Down right by the Quartermaster's there, at Schofield Barracks. [378]

Q. Under Mookini what was the usual procedure in obtaining foodstuffs for your mess?

A. It ran along the same as Mr. Gibson until we couldn't get sufficient stuff at Chun Hoon's there or we had the husks of everything that was left over, because I couldn't go down, because for all my stuff I made my list out and give it to Mr. Gibson; he tended to it. After a while I told Captain Miles, "We've got to make a change in vegetable ordering; we can't get sufficient stuff, we've got to take what's left after the Army has their supplies; we can't carry on this way, we've nothing but frozen meat this way; the help is all new at the game, so we have to do something." So Captain Miles suggested Aala Market; I says "O. K.". He said, "Do you know any good vegetable man in town?" I said, "I know a man named Lee Chong"; so he told me to phone him to come up, that he wanted to see him.

Q. Before we go on with that, let's go back. You say, under Gibson's regime Gibson went over and picked out the vegetables?

A. He used to go down and get the stuff; he used to go down there or phone the order in for me.

Q. Under his regime how were the vegetables and fruits?

A. Fair, but nothing to brag about.

(Testimony of John Edward Cunningham.)

Q. And all your canned goods, where does that come from?

A. From the Quartermaster, sir.

Q. And you say you suggested this man Lee Chong; did he ever appear on the scene?

A. He did come up and see Captain Miles, sir.

Q. And where did he come to see Captain Miles?

A. At Schofield Barracks, sir. [379]

Q. Ever introduce this man to Mr. Mookini?

A. Yes; afterwards they had a talk together, Captain Miles and Lee Chong, I believe. Captain Miles told me to go down with him and introduce him to Lee Chong and placed a small order with him there.

Q. Where did you introduce Mookini to Lee Chong?

A. Right in Lee Chong's office, sir.

Q. When was that, if you recall?

A. I believe the first order they got was about the 6th or 7th of April, somewhere around that time.

Q. What happened on that occasion, if anything?

A. We went down there and I introduced him, and he placed an order, and he promised to give us good service and good merchandise. He opened up a couple of bottles of beer for us, gave us a handful of cigars apiece, and off he went.

Q. Did you ever go down there afterwards?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. While you were at Lee Chong's—withdraw that.

Did Lee Chong ever have a conversation with you about Mookini, in Mookini's office?

A. Yes, sir.

Q. When was that?

A. That was about the end of the month.

Q. End of what month?

A. April.

Q. Where did that conversation take place?

A. It took place in his office.

Q. What was that conversation, to the best of your recollection?

A. Lee Chong told me that Mookini wanted his home account added in to the C. C. C. account. I told him, "I don't like the idea; you're fooling around with Federal people, [380] and you've got to explain that one of these days." "Well," he told me, "you fix it up"; I says, "No, you better wait a couple of days when I and him will come down here and you hand him the bill".

Q. Did you and Mookini come down a couple of days later?

A. Yes, we did come down there, and Lee Chong handed him the bill.

Q. Handed him what bill?

A. His personal bill for his home, around $34.00 and some odd cents; and he said, "Well, you and Jack fix that up". I says, "I'm not fixing nothing up". So he says to me, "There are a lot of cooks

(Testimony of John Edward Cunningham.)

looking for work and there are a lot of cooks willing to do as they are told; that's all I have to say; you meet me at the Capitol Building."

Q. What did Mookini do then?

A. He went up to the Capitol Building there and I had to meet him afterwards.

Q. After he left did you have any further conversation with Lee Chong?

A. Yes sir.

Q. What was that?

A. I told Lee, "This looks kind of funny——"

Mr. ULRICH: If Your Honor please, of course this has nothing to do with either of the charges in this case; I really don't mind it going to the jury; but at this time, for the purpose of a ruling, I move to strike all of the witness' testimony as to this conversation. I object to the present question on the ground that it deals with a matter not involved in the present issues, that it is merely an attempt to bring into the record something which did not even—it [381] wasn't even suggested that it had reached a point of any crime; and I'll take the Court's ruling.

The COURT: The motion to strike is denied.

Mr. ULRICH: I'll take an exception.

The COURT: Exception is allowed.

A. I told Lee, "This don't look so hot." "Well," Lee says to me, "if you don't sign the bill I lose the business." "Well," I says, "it looks kind of funny; they seem to have me over a barrel; I have

(Testimony of John Edward Cunningham.)

been up against it long enough, and now that I have a job he's trying to put difficulties on my head; if you fix the voucher I'll sign the voucher; but if I ever have anything against him I am going to turn him in."

Q. Did he fix them up?

A. He did, sir.

Q. Did you sign them?

A. I did, sir—to hold my job.

Q. That was in the month of April?

A. About the month of April, sir; $34.00 and some odd cents of merchandise went to his home.

Q. And you knew when you O. K.'d these bills that the items listed on them, Mr. Cunningham, were not true and correct?

A. Yes sir.

Q. Now, did a similar procedure to this ever happen again?

A. Yes sir.

Q. When?

A. It happened in May again; and I says——

Mr. ULRICH: Same objection, if your Honor please.

The COURT: Same ruling.

Mr. ULRICH: Note an exception.

The COURT: Exception noted. Mr. Cunningham, let me caution [382] you not to make any statement except what was said in the presence of these defendants,——

A. Yes sir.

(Testimony of John Edward Cunningham.)

The COURT (continuing): in the presence of Mookini and Lee Chong, or at least one of them.

Mr. MOORE: The next month's bill, did you have any conversation with Lee Chong or Mookini with refernce to that?

A. Along about in May—in June, around the 4th of June, Mookini asked me, "Did you fix up my bill with Lee Chong?" I says, "No." "Well", he says, "you better, if you know what's good for you." So Lee fixed it up again and I signed it.

Q. Do you know how much that bill was that was fixed up?

A. Something around $72.00, I believe.

Mr. ULRICH: Same objection, if Your Honor please; the question calling for matter having nothing to do with the indictment, endeavoring to prove a separate offense not charged in the indictment. I'll take the Court's ruling.

Mr. MOORE: This, may it please the Court, is not offered as evidence of charging any offense, but it is offered for the purpose of showing general scheme, lack of mistake, and guilty knowledge.

Mr. ULRICH: If Your Honor please, it is an attempt to prove another crime against the defendants and a different crime against the defendants.

Mr. MOORE: It is a similar crime.

Mr. ULRICH: I'll take the Court's ruling.

The COURT: The Court holds that the evidence is admissible.

(Testimony of John Edward Cunningham.)

Mr. ULRICH: Note an exception.

The COURT: Exception. [383]

Mr. MOORE: When this $72.00 item was covered up in a voucher, who O. K.'d that, do you know?

A. I believe I O. K.'d it, sir.

Q. Do you recall the approximate date of the voucher?

A. Well, it was around the first ten days of the month, about that, around that time.

The COURT: What month, Mr. Moore?

Mr. MOORE: I am talking about the month of May.

A. The month of May, yes sir.

Q. You say that was around the first part of May?

A. No; the voucher that was billed in the month of May was for April, that was covered around the 6th to the 8th, around that date; that's the first voucher; then the May voucher was covered in June.

Q. That is, the month following is when the voucher came in actually for payment; therefore, when you speak of May, that is the vouchers that were issued in April?

A. Yes sir.

Q. Was there any other voucher besides this one for $34.00 and some odd cents, and the one for around $72.00?

(Testimony of John Edward Cunningham.)

A. There was another one, then, for June; we ran that up, I believe, to——

Mr. ULRICH: I object to that; we have another crime every day.

The COURT: Same ruling.

A. About to $102.00 or $103.00 that voucher went up.

Q. Did you have any cnoversation during this period with Mookini concerning these covering up?

A. Yes sir. He asked me about that last voucher, he asked me about each one there; on the last voucher he asked [384] me, "Did you fix that voucher up?" I says, "No." "Well," he says, "you better; you better get ready to go to town." So that's how I come with him that day and had it fixed up; and I said, "That's the last voucher I am fixing up."

Q. That is the $102.00 or $103.00?

A. $102.00 or $103.00; I told him, "I'm not fixing no more vouchers up."

Q. After that was there any other voucher that he asked you to fix up?

Mr. ULRICH: Same objection.

The COURT: Same ruling.

Mr. ULRICH: Exception.

A. No, he never asked me any more; his general bills he paid himself.

Q. After this date did you ever have any conversation with Mr. Lee Chong about any of these bills, such as these?

(Testimony of John Edward Cunningham.)

A. Yes, I had; along in August, about the 12th or a little before that, about the 14th, rather; I told him, I says, "Lee, Bob is getting pretty difficult, he's getting pretty hard"—no, Lee Chong told me, "You know, I don't understand Bob." I says, "What's the matter?" He told me, he said, "He'll have to get you out of that job of yours, because as long as you're there he can't make no money." So when Lee Chong told me that I came back to Camp that night with Captain Miles, and he asked me——

Mr. MOORE: Never mind what you told Captain Miles.

Mr. ULRICH: He might tell that.

Mr. MOORE: Go ahead.

A. I told him that, and he asked me, "Well, has Bob gone crooked?" I says, "Yes". He says, "Have you got [385] anything on him?" I says, "Yes, I have;" and I took out of my pocket a wallet of Mothers' Day vouchers that come out there——

Mr. MOORE: Just a minute. Showing you United States Exhibit "C"; have you ever seen that before?

A. Yes sir.

Q. Is that the voucher to which you refer to taking out of your wallet?

A. Yes sir.

Q. Can you point out any items on that?

A. Items that we didn't receive; there's 400 pounds of pumpkin, strawberries, 500 oysters, that

(Testimony of John Edward Cunningham.)

we didn't receive on that; the others were camouflaged for paper plates, paper cups, and so on, and flowers, for Mother's Day.

The COURT: Mr. Witness, when a car goes by it makes so much noise it's very difficult to hear; so try and raise your voice so that part of the jurors can hear everything you say.

A. Yes sir.

Mr. MOORE: So that the jury can understand what we're talking about, this is the voucher of May 12th, the carbon copy that is United States Exhibit "C", which is the same one he took out of his wallet and showed to Mr. Miles. This Exhibit "B" is the original of that voucher and the one that has the lines through the various things. He's testified here that the 500 oysters and the 400 pounds of pumpkin were not received. (Showing documents to the jurors.)

Q. Calling your attention to United States Exhibit "D", which is the voucher that does not have the paper plates [386] and napkins on it; you say the Camp did not receive these 500 oysters?

A. No sir.

Q. 400 pounds of pumpkin?

A. No sir.

Q. How about apples?

A. Apples, there were only two boxes delivered, sir.

Q. How about spinach?

(Testimony of John Edward Cunningham.)

A. No spinach; that was all camouflaged in with the paper cups and flowers.

Q. Squash?

A. No.

Q. Lima beans?

A. No.

Q. Were you present when the delivery of this May 12th order came out?

A. Yes sir.

Q. Showing you United States Exhibit "B", I'll ask you if those are your initials at the bottom of that page?

A. They are; but when I signed this bill those lines weren't on there.

Q. That is, these lines through the items were not on there?

A. No sir.

Q. Do you know what this item of oysters is for?

A. Yes sir.

Q. What's it for?

A. That's for a box of booze that come out for Mr. Mookini; that was the last thing come out of the wagon;——

Q. And where was it taken?

A. Lee Chong told me on the bill that "Here is a box for Bob," and he says, "See that he gets it." I says, "What do you want to do that for, that's not right." So he says, [387] "Well, I can't help it, he makes me do it." So he handed me the box and I took the box into the storeroom; I was sure hot over

(Testimony of John Edward Cunningham.)

it; and I took the bill over to Mookini; Mookini was having his breakfast, between 10 and 11 o'clock, and I made him sign that voucher.

Q. That's the carbon copy of the voucher?

A. Yes sir.

Q. That's the one that you had in your wallet?

A. Yes sir, the one I had.

Q. Referring to United States Exhibit "C"—and after you put this stuff in the storeroom did it stay there?

A. It stayed there in the storeroom until that night, about half past five, Mr. Mookini come to me; he says, "Did Lee Chong bring a box out for me?" I says, "yes; a nice trick you played; good thing the old man didn't catch you checking that stuff in;" I says, "don't you ever pull that off on me again." He never said a word to me. He told me when it got a little darker to take it over to his tent.

Q. Was it taken over to his tent?

A. Yes; I and Herbert Lloyd took it over to his tent.

Q. Who is Herbert Lloyd?

A. Herbert Lloyd is the permanent "K. P.", in the kitchen.

Q. What did that box contain, if you know?

A. A little boy was opening the box in there, and I caught him peeping into it; I told him, "Keep away from there", Lloyd come there and he says, "What did you find——"

Mr. MOORE: Never mind. Do you know what was in it?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. What was in it?

A. There was liquor in it.

A. How much? [388]

A. There was 3 quarts of whiskey and 3 of gin.

Q. On this delivery was there some flowers came out?

A. Yes sir.

Q. I notice there is also listed on here 25 baskets of strawberries?

A. We didn't get them, sir.

Q. Do you know what these flowers were camouflaged as?

A. No sir; but I believe, in the spinach.

Q. You don't know?

A. I don't know.

Q. You did receive, though, the limu, opae, opelu——

A. Yes sir.

Q. Mixed nuts and candies——

A. Yes sir.

Q. After-dinner-mints?

A. Yes sir.

Q. And these flowers were used for what, Mr. Cunningham?

A. For decorations for the table for Mothers' Day.

Mr. MOORE: May we have a recess at this time, Your Honor?

The COURT: The Court will take a short recess.

(Recess—11:02 to 11:11 a. m.)

(Testimony of John Edward Cunningham.)

Mr. MOORE: At the time of this May 12th delivery was there anything said by Lee Chong about the item of oysters?

A. Yes sir; he told me that he had a box of liquor for Mookini marked as "oysters".

Q. You say that you started purchasing from Lee Chong shortly after Mookini became Mess Officer. From then on did the bills from there increase or decrease, if you know?

A. Increased right along, heavy.

Q. Were you still cook out there around the first of September?

Q. Yes sir. [389]

Q. And what happened around there; anything unusual happen around the first of September?

A. They had a luau out there.

Q. Any flowers out there at that time?

A. Yes sir, they had a lot of ginger leis out there.

Q. Where did they come from?

A. Came from Lee Chong.

Q. Any cigars or cigarettes?

A. Mookini had some cigars and cigarettes in his tent.

Q. Where did they come from?

A. That was supposed to come in on the bill; and I questioned him, "I didn't receive no cigarettes or cigars, what become of them?" He says, "I've got them in my tent."

Q. Mookini told you that?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. What was done with these leis, if you know?

A. They were given to the guests out there.

Q. Who gave them to the guests?

A. Mookini had the leis in his tent; and I seen the people all wearing ginger leis, all these friends that he invited out there.

Q. Did you get any leis?

A. Yes; I seen the box and I took one lei when I was called over there for some lemonade and some orange juice.

Q. Get any cigars or cigarettes?

A. No sir, I didn't get none from him that day.

Q. Did you see any cigars or cigarettes around there?

A. Yes sir, I seen them in his tent.

Q. And the cigars and cigarettes never went into the Mess?

A. No sir, I never seen them in the Mess.

Mr. MOORE: You may cross-examine. [390]

Cross-Examination

By BARRY S. ULRICH, Esq.

Q. Mr. Cunningham——

A. Yes sir.

Q. You don't like Mr. Mookini, do you?

A. Oh, I like everybody.

Q. You do?

A. I do.

Q. You're just sort of a friend of the world, is that the idea, you like everybody?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. You haven't been going around town here telling people how you were going to "get" this man Mookini, have you?

A. I don't think I've told anybody I'm going to get him.

Q. And you are the same Mr. Cunningham, are you not, who shot and killed——

Mr. MOORE: Just a moment, Mr. Ulrich; if you're going to bring that thing up—may it please the Court, I'll ask that the jury be excused——

Mr. ULRICH: All right.

Mr. MOORE: This matter that he's starting here, I know what it is; it has no place whatever in this case.

Mr. ULRICH: It has a perfect place in this case; the jury is entitled to know the type of man they're listening to here.

The COURT: Is it claimed that this man has been convicted of some felony?

Mr. ULRICH: It's not the thing he's been convicted of, if Your Honor please——

Mr. MOORE: Then that is the only thing that can come in [391] here; the idea of referring to something unless the man has been convicted of a crime in a criminal case is highly improper and prejudicial.

Mr. ULRICH: I submit it is proper, and I am willing to submit authorities on that, that I am entitled to go into a man's life when I am cross-examining him on the stand, to show the type of man

(Testimony of John Edward Cunningham.)

he is; he might escape conviction and yet be a man that no jury is entitled to believe.

Mr. MOORE: May it please the Court, I'll ask that before there's any discussion of this that the jury be excused.

The COURT: If counsel wishes to seriously urge this matter the jury will be excused.

Mr. ULRICH: I do wish to seriously urge it; I would like to show authorities; I have cases here.

The COURT: The jury will be excused until called.

(Jurors retire from courtroom)

Mr. ULRICH: If Your Honor please, as I understand the law, there are two separate and distinct things; one is the proof by independent evidence of a crime or offense or other thing in the life of the witness tending to discredit the witness; as to those things, by proof through another witness, we're confined to the commission of crimes or offenses to actual convictions in courts. In the case of Republic against Luning, 11 Hawaii 390, the rule has been laid down, in the courts of the Territory of Hawaii at least, if Your Honor please, to the effect that when a witness, however, is under cross-examination, within limits to be determined by the discretion of the Court, his past life may be gone into by the cross-examiner to any reasonable extent for the purpose of showing the type of a man who is on the witness stand. [392] The Court, of course, under the ruling in that case, has a right to stop counsel when the Court feels——

(Testimony of John Edward Cunningham.)

The COURT: The Court didn't get the citation.

Mr. ULRICH: 11 Hawaii 390, Republic against Luning.

The COURT: Can you state briefly what the facts were in that case? The Court is not familiar with it.

Mr. ULRICH: I don't know that I could even tell Your Honor the crime that was being charged; I was concerned only with the language dealing with this particular question, the right of counsel to cross-examine. (argument continued).

Mr. MOORE: May it please the Court, what is sought to be introduced here in evidence is this: It appears that some two years ago a man by the name of Piper was shot out at Kailua, and this man held the gun that shot him; then an investigation of that particular incident was made by a coroner's jury and a grand jury of this Territory; and this man by both of those bodies was exonerated from the charge of murder or criminal charge; a no-bill was returned; which shows, may it please the Court, that, insofar as this defendant is concerned with reference to that particular charge, there wasn't enough probable cause that this man had committed a crime. And because, if I in defense of myself or my home shoot somebody, is that to be brought up in a court of law before a junry to prejudice somebody? I don't care what the Supreme Court of the Territory of Hawaii says; it has been, in the Federal courts throughout this land, held consistently that the only question with reference to a crime that

(Testimony of John Edward Cunningham.)

you can ask a witness on the witness-stand is whether or not he has been convicted of a crime and that crime one involving moral turpitude. And [393] to go into that thing, what Mr. Ulrich proposes to do; has no bearing whatsoever on this case, and it's an attempt, a vicious attempt, to bring bias and prejudice into this case where it has no place whatsoever; and we submit that any question with reference to that episode at Kailua a couple of years ago has no place in this record.

Mr. ULRICH: I'll take the Court's ruling.

The COURT: It occurs to the Court that if we were to go into a matter of shooting, if a claim of self defense were made we would almost be obliged to inquire into it, or any other proper defense. It's true a witness cannot refuse to answer a question merely because it may tend to incriminate him; what we're primarily concerned about in this case are such matters as would bear upon the veracity of the witness rather than whether he may have been mixed up in some quarrel even though it had serious consequences. The Court certainly would not permit, Mr. Ulrich, that you go to the extent of inquiring into an alleged murder.

Mr. ULRICH: I'll take the Court's ruling, and just to get the Court's ruling I suppose I would have to make an offer of proof.

The COURT: Yes, you better make it a formal offer, for the sake of the record.

Mr. ULRICH: Yes. I'll offer to prove by this witness that, some time in the year 1933, along about

(Testimony of John Edward Cunningham.)

April or May of that year, at Kailua, on the Island of Oahu, this witness shot and killed an elderly man by the name of Piper, who was a cripple; and that thereafter the matter was called to the attention of the grand jury; on such evidence as was then introduced a no-bill was found. I'll take Your Honor's [394] ruling on the offer.

Mr. MOORE: We object to the offer, for the reasons already given, Your Honor.

The COURT: It appears to the Court that the offer simply amounts to this: That the defendant was accused of a crime, which was inquired into by a grand jury, and the grand jury did not indict the defendant. The objection is sustained.

Mr. ULRICH: Exception.

The COURT: Exception allowed.

(Jurors return to courtroom)

Mr. ULRICH: Mr. Cunningham, as I understand your testimony, you suggested to Mr. Miles the name of Lee Chong the first time that Lee Chong was brought out there, did you?

A. I did.

Q. And Mr. Lee Chong came out to the Camp thereafter and you gave him a first trial offer, or something of that kind?

A. Mr. Mookini gave him the first order.

Q. Mr. Mookini gave the first order. Now, that was when, as nearly as you can recall?

A. About the 6th of April, around that time.

(Testimony of John Edward Cunningham.)

Q. How soon—you say that Mookini and Lee Chong got together on this business of fleecing the Camp to the extent of Mookini's grocery bill, so that even in the month of April you covered up some of Mookini's groceries, is that right?

A. Covered it up in May.

Q. Not until May?

A. Covered up in May voucher for April.

Q. But the thing started in April?

A. Yes sir. [395]

Q. That's only May; you only got it in the month of April, didn't you?

A. I didn't know nothing about it until the end of April, when I was approached about it.

Q. You didn't know anything about it until May; but when it was finally called to your attention what you discovered was that during the month of April or some time before it was called to your attention Lee Chong and Mookini had got together and agreed that they would try and put the Mookini grocery bill on the government account, is that right?

A. That's what it was intended for.

Q. So where was this first conversation that you had with Mr. Mookini and Mr. Lee Chong about this charging of the grocery bill?

A. That happened about in May, right in his office.

Q. In May; what time in May?

A. About between the 2nd and 4th of May.

(Testimony of John Edward Cunningham.)

Q. Between the 2nd and 4th of May, in Lee Chong's office?

A. Yes, in Lee Chong's office.

Q. Just tell us again what was said there at that time, as nearly as you can recall.

A. That Lee Chong handed Mookini his bill, at that time, and he says, "You and Jack fix it up." I says, "I'm not fixing nothing up."

Q. What's the first thing that happened—just Lee Chong handed him the bill and says "Yoo fix it up"?

A. On this day you're asking me about, Lee Chong brought the subject up, at the end of April.

Q. This is the first time I'm asking you about.

[396]

A. First Lee Chong told me, "Mookini wants this bill camouflaged in the C. C. C. Camp;" I told Lee, "That don't look so hot; I don't want to mix myself in trying to pull stuff like this." He says, "Mr. Cunningham, if you don't sign it I lose the business."

Q. This happened the first of May, along about the first of May?

Mr. MOORE: He said the latter part of April, Mr. Ulrich; isn't that true?

A. This happened at the end of April.

Mr. ULRICH: And there were present yourself, Lee Chong, and Mookini?

A. No, not at that time.

Q. No?

A. Not at that time.

(Testimony of John Edward Cunningham.)

Q. The first time who was present?

A. First Lee Chong and I was present.

Q. Just Lee Chong and you?

A. Yes.

Q. And then Lee Chong told you that Mookini wanted to camouflage this grocery bill in the Government account?

A. Exactly.

Q. You said, "That doesn't look so good, Lee", and so forth, as you've said?

A. I told him, "Wait until him and I come to town in a few days and you hand him the bill in front of me."

Q. Then he and you came to town in a few days?

A. We did.

Q. And he handed him the bill in front of you, and Lee Chong says, "You take care of it, Jack", or something like that?

A. No; Lee Chong handed Mookini his monthly statement and he says, "You and Jack fix it up."

[397]

Q. "You and Jack fix it up"?

A. Yes.

Q. Whereupon you said you wouldn't fix it up?

A. I told him, "I'm not fixing nothing".

Q. I see; "I'm not fixing nothing". Then there came a time when your moral fibre weakened a little bit and you decided you would do it?

A. No, it didn't weaken then.

(Testimony of John Edward Cunningham.)

Q. It stood firm at that time—you were firm?

A. When he handed him the bill he says, "There's a lot of cooks looking for work and a lot of cooks willing to do as they're told"; later I said, "If it's getting this bad I don't know what to do"; Lee Chong says, "If you don't sign it I lose the business". I says, "Lee, to hell with that kind of business; but wait a minute, let me think it over"; and I thought it over; he says, "What are you going to do?" I says, "If you're willing to fix the voucher up, I'll sign it; but if I ever get anything on him I am going to turn him in."

Q. So that all happened at one conference?

A. One conference.

Q. So you didn't stand firm very long; you weakened at that first conference?

A. I did, on his threat.

Q. You say that the first month you covered up about how much of the groceries that Lee Chong had delivered to Mookini?

A. I didn't cover Lee Chong; I covered Mookini.

Q. That's what I mean; that Mr. Lee Chong had put in the bill, as I understand you, a certain amount of groceries that were never taken to the Camp at all?

A. No. [398]

Q. That were sent to Mr. Mookini personally; and how much was it in April?

A. Around $34.00 and some odd cents.

Q. How do you say "$34.00 and some odd cents"; where did you get those figures in there; is

(Testimony of John Edward Cunningham.)

that some sort of recollection, or is there a memorandum you have?

A. No memorandum; I remember thoroughly that first month, about $34.00 and some odd cents.

Q. Do you remember how it was covered up, or anything of that kind?

A. Lee Chong entered it in as one item we had ordered for the Camp, then he would camouflage something, and so on down the line.

Q. Did you receipt and O. K. the vouchers as they came in; do I understand that to be your testimony?

A. I checked them when I was there.

Q. And you would come to some item that wasn't there, for example, and you would make a mental note that that was probably the groceries that were going to Mookini?

A. Exactly.

Q. And in that way you found about $34.00 worth of groceries that didn't come into the Camp that month?

A. Exactly.

Q. The next month how much did you find?

A. The next month she ran about $72.00 and some cents.

Q. $72.00 and some cents?

A. $72.00 or $73.00; about $72.00, I believe.

Q. You didn't make any memorandum of that, did you?

A. No sir.

(Testimony of John Edward Cunningham.)

Q. Then the next month it kept on, and it ran about how [399] much the third month?

A. About $102.00 or $103.00.

Q. So that during—the first month would have been for April, the next would have been the bill for May, and then the bill for June; how much did they put on the bill for July?

A. The July bill he paid himself.

Q. Who paid?

A. Mookini. I stopped signing them vouchers, and I told Lee Chong, "It's got to be stopped."

Q. When did you stop signing his vouchers?

A. He got his account in April, May, and June; and for April it was covered in May, May in June, and June in July.

Q. How did you happen to stop; what happened to stop you?

A. Well, I didn't like the idea, the way he was going.

Q. After you had covered up about $200.00 worth of groceries there, you decided that the thing had gone far enough, is that right?

A. Exactly.

Q. So you come to him and told him it couldn't happen any more, is that right?

A. No; I told him I wasn't signing no more vouchers.

Q. Then after that, when the groceries kept on coming out there, did you ever find groceries that

(Testimony of John Edward Cunningham.)

didn't appear on the list, such as you had before; you said you wouldn't O. K. them?

A. No, everything come out all right.

Q. Instantly, when you said you weren't OK'ing any more vouchers, they stopped sending them out there—that is, stopped holding goods out? [400]

A. No, they didn't stop holding goods out.

Q. They kept right on them, did they?

A. The goods that we ordered for the kitchen.

Q. But the bills would come out there and you'd have groceries that wouldn't arrive, just as before?

A. No sir; everything came out.

Q. That's what I am saying: Just as soon as you told him you were OK'ing no more vouchers they didn't hold out any goods on the bills that were sent to you?

A. They never did hold out any, only those vouchers I did sign when they camouflaged the bills.

Q. But the voucher comes out with the groceries?

A. It does.

Q. As the voucher comes out with the groceries, the way you would know what was going on would be the fact there was an item appearing on the bill that you didn't receive, and you would say "That has gone to Mookini"?

A. That was for the first three months.

Q. Now then, after you had made this declaration of independence saying you weren't going to stand for it any more, do I understand that they did or did not continue to send out statements with

(Testimony of John Edward Cunningham.)

merchandise which was not being delivered on the statements?

A. As the statements come out the goods come out with them.

Q. So they did stop the practice immediately when you told them you weren't going to stand for it any more?

A. Exactly.

Q. Do I understand that you and Lee Chong and Mookini were the only people who knew about this thing when it was going on there, is that right? [401]

A. Correct.

Q. Did you testify before the Grand Jury?

A. I did.

Q. Did you tell them all about this thing?

A. Yes.

Q. Rather a surprise to you that after hundreds of dollars of defalcations they only bring indictments in two counts in this case, I suppose?

A. I don't know what they brought.

Q. You told them, though, that you had been covering up hundreds of dollars worth of personal groceries that went to Mr. Mookini and never came out to the Camp at all?

A. That I only covered up for the first three months.

Q. That you only covered up for the first three months; you told them that, did you?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. And all we get is this seventeen odd dollars flower item and sevently two dollars for keawe wood, cups, wire, and so on, for the luau, that's all there is in the indictment?

A. I don't know.

Q. You don't even know what you're indicted for?

A. I know what I'm indicted for.

Q. You're not indicted for any connection with Mr. Mookini's personal groceries, are you?

A. I am indicted for that, for signing these false vouchers.

Q. Don't you know that the vouchers in this particular case have nothing to do with these particular items that you have been talking about for Mookini's groceries over the months of April, May, June and July?

A. That's the only three that's been covered.

Q. Don't you know that the two counts in this case have to do solely with the Mothers' Day bill in May and with [402] the luau bill in September?

A. The luau bill in September, as I said, when I signed that voucher for delivery there I questioned him about the cigarettes and cigars and he said he had them in his tent.

Q. Just another question: You understand that's all that's involved in this case—those two bills?

A. There's three bills I signed for.

Q. I don't care how many bills you signed. According to your testimony you were signing

(Testimony of John Edward Cunningham.)

vouchers every other day; but, so far as this case is concerned, you know that all you are charged with under this indictment is with respect to these two bills?

A. I am charged with signing these false vouchers; that's all I know about.

A. Yes, in connection with these two bills—Mothers' Day and the luau bill—is that right?

A. I don't know.

Mr. ULRICH: Well, the indictment speaks for itself, so far as that's concerned. This would be a convenient place to adjourn.

The COURT: Remember the admonition of the Court heretofore given you, and refrain from discussing this case among yourselves or permitting anyone to talk to you about it until the case is finally submitted for your decision. We will now be adjourned until 9:00 o'clock tomorrow morning.

(Adjourned—11:46 a. m.) [403]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Thursday, May 16th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants Robert K. Mookini and Lee Sau Chong being present with their respective counsel Earl R. McGhee and Barry S. Ulrich, Esq.;

(Testimony of John Edward Cunningham.)

WHEREUPON, the following further proceedings were had and testimony adduced:

The COURT: Does counsel stipulate that the jury are all present?

Mr. MOORE: Yes, Your Honor. Ready for the United States.

Mr. ULRICH: Ready for the defendants.

The COURT: Mr. Ulrich, you stipulate that the jury is present, do you?

Mr. ULRICH: Yes, Your Honor.

The COURT: Let the record so show.

Mr. ULRICH: May I continue, Your Honor?

The COURT: Yes, you will proceed. [404]

JOHN EDWARD CUNNINGHAM resumes the witness stand, under continued Cross-Examination by Barry S. Ulrich, Esq.

Q. Mr. Cunningham——

A. Yes sir.

Q. I understood you to testify that Mr. Mookini did most of the buying or purchasing of foodstuffs, and so forth, is that right?

A. He was authorized to.

Q. He was authorized to?

A. Yes; he was the Mess Officer.

Q. As a matter of fact, who did most of the ordering—he, or you—would you say?

A. Most of the ordering was done through the Commissary.

(Testimony of John Edward Cunningham.)

Q. Most of the ordering was done through the Commissary?

A. Through the Commissary.

Q. Now let's confine our attention to the ordering in town; who would you say did most of that?

A. I had to make out my lists of what I wanted and show it to him; he would tell me to go ahead and phone in for it or "If you're going in give the order".

Q. Who would go in and give the order?

A. If I was going in to town; if he was going in to town, as he did on several occasions, he took the list himself and gave Lee Chong the order himself.

Q. Sometimes you would place the order, sometimes he would?

A. Most of the time I would place the order.

Q. Most of the time you would place the order?

A. Over the phone.

Q. And sometimes — you have the different vouchers here— [405]

sometimes he would receipt for the goods that were purchased, sometimes you would?

A. Exactly.

Q. And then those receipts, with either his or your O. K. on, would go into the records and in due course would make part of the bill which would be paid at the end of the month, is that right?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. Now Mr. Cunningham, under those circumstances why in the world do you suppose that Mr. Mookini would have to come to you and ask you to permit him to go through any sort of deal of this kind with Lee Chong such as you've testified to?

Mr. MOORE: Just a moment. I object to that question as calling for a conclusion of this witness; the question is "Why do you suppose?"

Mr. ULRICH: (Argument)

Mr. MOORE: May it please the Court, the question of the reasonableness of it is a question for argument. The question as to what this man thinks is reasonable or unreasonable is calling for his conclusion and is not evidence.

Mr. ULRICH: If Your Honor please, I don't expect to get anything as evidence that's worth anything as evidence; I don't believe this testimony is worth a thing.

Mr. MOORE: Just a minute; I object to that course of conduct and request that this Court instruct this jury to disregard any such statement, and that counsel refrain from making statements of that kind in the presence of this jury.

Mr. ULRICH: If Your Honor please, I believe I have a right—in answer to counsel's comment—to suggest that I'm not [406] eliciting evidence as evidence from this witness; I'm examining this witness on cross-examination for the purpose of discrediting his testimony, of showing the type of man that he is, and of analyzing the evidence he has

(Testimony of John Edward Cunningham.)

given, with the obvious view, as the jury know, of showing his evidence isn't worth a thing, as I'll eventually contend. If Your Honor please, I submit that's a perfectly proper answer to counsel's suggestion that I am confined to the eliciting from this witness of relevant testimony. I submit I'm not in this case confined at all; I have the full scope of cross-examination.

The COURT: The Court, however, feels it's improper for both counsel to argue the question of the weight or credibility of testimony at this time in connection with the objection.

Mr. ULRICH: Yes, Your Honor.

The COURT: That should be done when it comes to argument to the jury, when the testimony is being weighed for that purpose. Your question "Why do you suppose" so and so seems to the Court to call very clearly for the conclusion of the witness.

Mr. ULRICH: Certainly.

The COURT: If the question is put in the form, does he know why he did it, the Court would admit it as a proper question.

Mr. ULRICH: Very well; I'll state it that way.

Q. State, if you know, Mr. Cunningham, why Mr. Mookini came to you and took you before Mr. Lee Chong to get you to agree to a scheme whereby he was to camouflage certain of his personal items on bills which you were to O. K., for he could have OK'd them himself and not have had to disclose [407] it to you at all; why do you suppose he did it?

(Testimony of John Edward Cunningham.)

Mr. MOORE: I object to "why do you suppose".

Mr. ULRICH: State if you know why.

A. I don't know why; he was my superior officer at that time; I had to do just as I was told.

Q. You felt you had to do just as you were told, no matter what you were told to do, is that the idea?

A. I was told to do that and I done it.

Q. You "done it" because you felt you had to do anything you were told to do, is that the idea?

A. Not anything. I was out of employment and I just picked up a job and I wanted to hold my job, and when he threatened me that way I couldn't do no more.

Q. When he "threatened" you?

A. In the presence of Lee Chong; "if I wouldn't do that there were a lot of cooks looking for work".

Q. Yes, you had a great little speech about "a lot of cooks looking for work"; there were a lot of—I saw some report of your evidence as "crooks"; it was "cooks" that he said, is that right?

A. I don't know about "crooks"; you probably made up them; I said "cooks".

Q. Just before we leave this little matter of the personal account: You gave us on your direct examination, as I recall, the April figure, which was $34.00, is that right?

A. $34.00 and some odd cents.

Q. You're quite sure it was not a flat $34.00?

A. No sir, unless Lee Chong *when* and changed it in his account.

(Testimony of John Edward Cunningham.)

Q. Unless Lee Chong changed it?

A. Yes sir. [408]

Q. It would be thirty four dollars and some odd cents, that's the April figure, is that right?

A. That's the April figure, camouflaged in May.

Q. Now then, the May figure was how much?

A. I believe it was around $72.00 or $73.00; I don't remember correctly.

Q. Between $72.00 and $73.00?

A. Yes, and some odd cents.

Q. Now which is it; is it seventy-two dollars and some odd cents, or seventy-three dollars and some odd cents?

A. It's either one of those figures.

Q. It's either seventy-two dollars and some odd cents, or seventy-three dollars and some odd cents?

A. I'm not sure which one it was.

Q. You're not sure which one it was, but it was either one or the other, with a few odd cents, and not in even dollars, is that right?

A. Yes.

Q. And the hundred odd dollars figure in June was how much, did you say?

A. I believe it was $102.00 or $103.00.

Q. This time was it a flat figure, or were there some cents added on?

A. I don't remember correctly.

Q. It might this time have been a flat figure?

A. I don't know about the cents; I believe they all ran a little extra.

(Testimony of John Edward Cunningham.)

Q. Well, you know that the others ran extra; you have been very definite to the effect that there were some odd cents on April and May; now, as to the June figure, are you [409] just as definite about that, or not?

A. Probably so.

Q. Are you, or are you not; do you know the June figure any more definitely than you know the other figures?

A. Probably more, a few more cents, and probably not; I don't remember exactly.

Q. As to the June figure you are actually willing to tell us you don't remember whether it was a few odd cents over an even figure, or not, is that right?

A. I believe it was probably an odd figure.

Q. You believe it was an odd figure?

A. Yes.

Q. Well, 102 dollars and some odd cents, do you mean?

A. That, or 103 dollars.

Q. It might have been 103 dollars?

A. Yes.

Q. Your memory as to the June figure is not quite as definite as to the April and May figures?

A. My memory is—it's been so long ago that I don't keep all of those in my head.

Q. That's why I have been trying to find out what's in your head; what have you been doing—carrying a memorandum around with these figures on?

A. I got no memorandum.

(Testimony of John Edward Cunningham.)

Q. When did you last see these figures?

A. I see them in the papers every day.

Q. In the papers every day?

A. You see figures in the papers every day.

Q. What are you talking about?

A. What figures do you mean? Explain yourself thoroughly.

Q. I mean the figures for the amounts of Mr. Mookini's [410] groceries that were charged into this account in the months of April, May, and June; that's the figures I'm talking about; you knew that, didn't you?

A. No, I didn't quite understand that.

Q. You didn't quite understand that?

A. No, I didn't quite understand you.

Q. What were you talking about when you talked about seeing the figures in the papers?

A. The way you come out with the figures, I have seen these figures continuously.

Q. Where?

A. In the United States Marshal's office.

Q. In the United States Marshal's office?

A. I mean, in the United States Attorney's office.

Q. And how did they get into the United States Attorney's office?

A. I don't know, sir.

Q. When did you first commence to see figures in the United States Attorney's office?

A. It's a long time ago, sir.

(Testimony of John Edward Cunningham.)

Q. A long time ago you saw figures in the United States Attorney's office; how long ago?

A. I seen these vouchers.

Q. How long ago?

A. About a month or two before I was indicted.

Q. About a month or two before you were indicted you saw the vouchers?

A. Something like that, yes sir.

Q. And the figures you saw were the vouchers?

A. Yes. [411]

Q. Don't you know the vouchers don't have these figures we're talking about, at all; don't you know that?

A. I don't know; I have seen figures on vouchers.

Q. They have nothing to do with these figures we're talking about; these are the figures that were camouflaged on the vouchers, according to your testimony—they didn't apear there at all; don't you know that?

A. They were camouflaged on the vouchers.

Q. They weren't there, though?

A. Not to total as one.

Q. And the figures you have given us—$103.00, $102.00, $72.00, you didn't see them on the vouchers, did you?

A. They were added on the vouchers.

Q. You didn't see them on the vouchers?

A. No, but they were added on the vouchers.

Q. Yes, I know that; as a matter of fact, you know perfectly well you haven't seen these exact

(Testimony of John Edward Cunningham.)

figures at all, have you, except in your own imagination?

A. Yes, I have, at one time when Lee Chong showed me these bills that he had to add in on these vouchers.

Q. The last time you saw them was when Lee Chong showed them to you on the vouchers, is that right?

A. He showed these figures to me.

Q. Will you answer my question?

A. He showed me these figures of Mookini's account to be added on, camouflaged on these vouchers.

Q. And that's the last time you saw them, is that right?

A. No.

Q. It's not right; well, what are you talking about seeing? [412]

A. I seen them in Captain De Ville's presence when he questioned me; I seen them figures again.

Q. Now then, Lee Chong showed you some figures on his vouchers indicating goods that had gone to Mookini, is that right?

A. Correct.

Q. And said, "Now look here, Mr. Cunningham, these are the goods that did not go to the Camp, and went to Mookini"; is that right?

A. No; he said, "This is Mookini's statement".

Q. "This is Mookini's statement"?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. In other words, he showed you a copy of his account with Mookini?

A. Yes sir.

Q. Then that account had been, as you understood, transferred into or camouflaged into the Camp account?

A. Exactly.

Q. And he carried a separate account for Mookini?

A. It's supposed to have been, because he showed me his statement.

Q. Well, he showed it to you?

A. Yes sir.

Q. Well, we'll show you what that account really shows.

Now, to take up for a minute the Mothers' Day—I show you United States Exhibit "B" and Exhibit "C", which, as you can see, are copies so far as the typewritten matter on the exhibits are concerned, Exhibit "C" being a typewritten carbon of Exhibit "B". Now, as I understood your testimony, when this Mothers' Day order was brought out to the Camp you were there and received the goods from Lee Chong, is that right? [413]

A. Yes sir; Lee Chong brought it out himself.

Q. And he gave you one or the other of these vouchers, which, after the goods had been checked over, you signed and gave back to him, is that right?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. Which one was that?

A. I believe that was this one (indicating).

Q. That is your signature, is it?

A. Initials, sir.

Q. Those are your initials?

A. Yes sir.

Q. Referring to United States Exhibit "B". Now then, as to Exhibit "C", did you see that document at that time and on that day?

A. This very bill?

Q. That piece of paper, yes.

A. Yes sir.

Q. This Exhibit "B", after you had signed, you gave back to Lee Chong; he took it back with him, did he not, or did he?

A. Yes sir, he took it back with him.

Q. That refers to the one on which your initials appear. What about this Exhibit "C"?

A. I kept that one.

Q. You kept that; he gave you that one, did he?

A. I was supposed to turn that in to the office, which I never did.

Q. You never turned it in to office?

A. No.

Q. Why didn't you turn it in to the office?

A. Because I kept that for reference.

Q. You kept it for reference. The customary practice was, on the delivery of a load of goods out there, the [414] original invoice or bill for the goods after you had checked it over would be signed and

(Testimony of John Edward Cunningham.)

turned over to Lee Chong as his receipt and he would take it back, and the carbon copy would be left for the records?

A. Either one or the other.

Q. One copy would be signed by you, and one copy taken back by Lee Chong, and the other copy would be left and placed in the records of the Camp?

A. Yes.

Q. I understand that Exhibit "C" is the one that was left, and that you did not place it of record at all, is that right?

A. This one, yes sir.

Q. It's the one on which Mr. Mookini's signature appears?

A. Yes sir.

Q. I understood you to say that, so far as this delivery was concerned, there were no oysters delivered?

A. No oysters.

Q. You receipted for $17.50 worth of oysters which were not delivered, is that right?

A. Correct.

Q. And in the place of those oysters, I understand your testimony to be, there was delivered liquor to the extent of $17.50, billed as $17.50, is that right?

A. That's what Lee Chong told me, he was delivering this box of liquor, and he was camouflaging that as oysters, for Mr. Mookini.

(Testimony of John Edward Cunningham.)

Q. He said he was camouflaging this box of liquor as oysters?

A. Yes, as oysters. [415]

Q. He pointed out this $17.50 bill, that that was what represented the liquor, is that right?

A. Yes, he told me he had marked it as oysters.

Q. Who was there when that happened, did you say?

A. Mr. Mookini——

Q. When Lee Chong presented you with this box, "These are the 'oysters'; it's liquor for Mr. Mookini", or something of that kind, who was there?

A. Mr. Mookini was having his breakfast at the table out there.

Q. I'm not asking who was having breakfast——

A. You asked me who was there.

Q. Was he there?

A. He was having his breakfast in the dining room.

Q. He was within earshot—he could have heard what was said?

A. Yes.

Q. So as Mr. Mookini could have heard?

A. He could have heard what was going on. Lee Chong was talking to me outside of the kitchen; he told me he had a box of liquor.

Q. Who was there heard what was said? Who in the world can corroborate what you're telling us?

A. You don't think Mr. Mookini was right alongside Lee Chong?

(Testimony of John Edward Cunningham.)

Q. I am asking you——

A. That's what I'm telling you.

Q. There was nobody there as party to this conversation except Lee Chong?

A. That's right, when he delivered the box to me.

Q. Was there any other time when anyone was present when Lee Chong told you about that liquor?

A. No, nobody was present. [416]

Q. So, as to whether or not Lee Chong told you that he was delivering liquor, it's a matter between you and Mr. Lee Chong, is that right?

A. Well, not according to the statement.

Q. What do you mean "not according to the statement"?

A. We got liquor in place of oysters.

Q. That's what you're telling me, but this conversation of Lee Chong's—you say that it was received, and all that is a conversation between you and Mr. Lee Chong?

A. That's just what I told you a second ago.

Q. You knew at once, then, that this was liquor, didn't you?

A. Yes.

Q. Just as soon as you got it?

A. Yes.

Q. Where did you put it?

A. Put it in the storeroom, down below.

Q. Say anything to Mr. Mookini—he was sitting at breakfast?

A. No, I didn't say a word to him; I took the bill over to him and made him sign it.

(Testimony of John Edward Cunningham.)

Q. Right then?

A. Right then.

Q. Did you say the liquor was there on the bill?

A. Didn't say a word.

Q. Just put the bill out and asked him to sign it?

A. Just put the bill out and a pencil there, "Here, receipt your goods".

Q. Whereupon he signed it?

A. He signed it.

Q. Nothing said about liquor?

A. Nothing said.

Q. So far as Mr. Mookini was concerned, he was not aware there was liquor on the bill? [417]

A. He kind of was, but he didn't say a word; he knew it was coming out, all right, sir.

Q. Where did you say you put it?

A. I put it in the storeroom; didn't you hear me?

Q. You put it in the storeroom. It stayed there all day?

A. All day.

Q. You waited until dark at night?

A. Not dark at night, just a little dark.

Q. Why didn't you take it over to Mookini's tent right away?

A. I didn't have no orders; I was waiting for him to come and see me.

Q. You didn't have no orders?

A. No.

Q. And although it was for Mookini you waited for it to be dark before delivering it to his tent?

(Testimony of John Edward Cunningham.)

A. It was marked with his name on the box.

Q. So you left it in the storeroom all day?

A. I did, and I stayed there all day keeping a good eye on it, too.

Q. Then at night you decided you were going to take it over to Mr. Mookini's tent?

A. I did not decide.

Q. You didn't decide?

A. No sir.

Q. Well, you must have come to that conclusion somehow or other?

A. Mr. Mookini came to me at half past five and asked if Lee Chong brought his box. I told him, "Yes"; then I told him, "It's a fine trick to pull off, Bob; too bad the old man didn't check if off when it come in; don't you dare pull that off on me again." He never said a word; and when it got a little dark we took it over to his tent. [418]

Q. He was the one who suggested waiting until it was dark?

A. That's his orders.

Q. Then you took it over to his tent?

A. I and Herbert Lloyd.

Q. When was this that you examined the contents?

A. I examined the contents after—they had a little boy in the storeroom filling up the shelves with the groceries there, and he seemed to be very curious, and he opened up this box, and I caught him opening up this box; I told him, "Ting Sing Wong, get out of here, what are you doing with that box?"

(Testimony of John Edward Cunningham.)

Q. That was the name?

A. Ting Sing Wong.

Q. Go ahead.

A. Better write it down.

Q. I am doing that. Go on.

A. He got out, and just then Herbert Lloyd came in, and he says, "What's the matter, Jack?" I says, "Here's a box of booze for Mookini." "Geewhiz," he says, "what's the matter?" I says, "I don't know; just leave it there, say nothing, that's all." We looked into it——

Q. Who was it looked into it?

A. I and Herbert Lloyd.

Q. Did you take the bottles out to see what they were?

A. They were wrapped; we unwrapped them; we seen them all.

Q. You unwrapped each bottle, saw what it was?

A. Saw what it was.

Q. What kind of whiskey was it?

A. As close as I can remember, it looked like Crab Orchard; it was Manila Gin, three bottles of Manila Gin. [419]

Q. Crab Orchard whiskey?

A. It looked like Crab Orchard whiskey, but it was whiskey; there was bona fide seals on them.

Q. Was it labeled?

A. It was labeled; as close as I can remember, it was Crab Orchard whiskey.

Q. Three bottles of the same kind?

A. Three bottles of the same kind.

(Testimony of John Edward Cunningham.)

Q. Quart bottles, or pints?

A. They were quart bottles.

Q. What kind of gin was it, you say?

A. Manila Gin.

Q. Also labeled?

A. Also labeled.

Q. Three bottles?

A. Three bottles.

Q. Same kind of bottles?

A. Yes sir.

Q. And then at night—this was during the daytime when you saw what it was—you took it over to his tent and left it there?

A. Yes.

Q. At a later time, did I understand you to testify, you saw Mr. Mookini direct changes which were to be made in this bill by Lee Chong; what happened about those lines?

A. I don't know nothing about those lines; all I know, that the following day after this Mothers' Day he asked me for this bill, and I told him I didn't know what became of it.

Mr. MOORE: What bill are you referring to?

A. The bill that Mookini sent for Mothers' Day.

Mr. MOORE: What exhibit is that, Mr. Ulrich?

Mr. ULRICH: He's talking about Exhibit "C"; is that the one (indicating)? [420]

A. That's the one.

Q. All right, go ahead.

A. He said, "Well, that's all right, I'm going down town today, I'll see him, I'll get his bill," he

(Testimony of John Edward Cunningham.)

says, "I'll fix it up." I says, "Why?" He says, "We got to change some stuff on there"; so it was done.

Q. So you had nothing to do with the changing of that bill at all, is that right?

A. He done the changing.

Q. At least, you didn't do it, you know that?

A. No sir.

Q. And you didn't see that bill at all with those marks on it, those lines, until it was produced in the course of this investigation or trial, is that right?

A. Yes sir.

Q. Now then, you indicated certain definite items on that bill which were not delivered; which ones were they?

A. The oysters weren't delivered,——

Q. Yes, you've told us that.

A. The pumpkins weren't delivered, I believe,——

Q. Where is the pumpkins (looking at document)?

A. Away down below (indicating).

Q. Oh, yes, the last item. Yes?

A. The strawberries weren't delivered; oysters, strawberries, pumpkins,——

Mr. MOORE: Still talking about Exhibit "C", Mr. Ulrich?

Mr. ULRICH: He's using them both now; I don't know which one he's referring to; both "C" and "D" are in his hand.

(Testimony of John Edward Cunningham.)

A. Where is the other bill with the squash?

[421]

Mr. ULRICH: Those are the two bills.

Mr. MOORE: That's Exhibit "D", the one he's asking for now.

Mr. ULRICH: We've got "D" and "C" here.

Mr. MOORE: There's another bill he's asking for, that has squash on, Mr. Ulrich.

Mr. ULRICH: Well, Mr. Moore, these are the only bills that came out with the load; that's the original bill; I am asking him which was changed; any other bill won't help.

Mr. MOORE: He's already testified to that.

A. I have already testified to that.

Mr. ULRICH: I am trying to get it definitely in the record, to see if this is the same as before.

A. Lima beans didn't come out; squash didn't come out; spinach didn't come out.

Q. Look at the bills; I want to see those items.

A. They're on another bill.

Q. Those are the only bills for the things that were changed; I am trying to find out what changes were made for articles that didn't come out.

Mr. MOORE: He's already testified, Mr. Ulrich, that the items on there that didn't come out were strawberries and pumpkin.

Mr. ULRICH: Yes; now he apparently enlarges it to squash and a lot of other things.

(Testimony of John Edward Cunningham.)

Mr. MOORE: He's already told you that squash and pumpkin are on another bill.

Mr. ULRICH: Please let him answer the question, Mr. Moore.

A. Squash and pumpkin were camouflaged for flowers and other things. [422]

Q. Where is the squash?

A. It's on another bill.

Mr. ULRICH: That's the voucher that came out with the load, isn't it?

Mr. MOORE: May it please the Court, it's apparent that this witness is referring to another bill with squash and so on with it. He stated with reference to another bill two or three items, the items which are camouflaged on it, and he's asking for Exhibit "D" which has squash and so on on it. I think the witness is entitled to have the exhibit to which he refers.

Mr. ULRICH: I'm not examining it yet; I can conduct my cross-examination as I desire.

The COURT: It appears to the Court that your questions are entirely proper. What you're seeking to get is what items were on the original invoice that came with these goods that were not delivered?

Mr. ULRICH: Certainly, that's the question.

The COURT: Let the Court at this time ask both counsel on a certain matter. It seems to me the terms "invoice" and "voucher" have been used rather interchangeably here. Is it to be understood that is the case, or is there a different meaning for one or the other?

(Testimony of John Edward Cunningham.)

Mr. ULRICH: The only difference I know is, an invoice becomes a voucher when it's properly receipted and signed.

Mr. MOORE: I have spoken of them interchangeably; when I refer to "invoice" or "voucher" I am speaking of these particular exhibits that are here in evidence.

Mr. ULRICH: I have used the terms more or less interchangeably. I believe that technically a voucher is a [423] receipted invoice or a statement —a receipt.

The COURT : It makes no difference, just so we get it straight, so that one doesn't understand one thing and one another. The jury should have a correct definite understanding of what we are talking about. At this time, Mr. Witness, the Court would like to ask you a question.

Q. In talking to Mookini, in which you called him "Bob", you referred to someone as the "old man"; whom did you mean when you said "the old man"?

A. Generally we called "the old man" out there Captain Miles.

Q. It was Miles that you meant when you were referring to "the old man"?

A. Yes sir.

Q. The Court would like to ask you another question: You have several times referred to Lee Chong's "office"; where is Lee Chong's office?

A. Aala Market.

(Testimony of John Edward Cunningham.)

Q. Here in the City of Honolulu?

A. Yes sir.

Q. And these things that you said occurred at Lee Chong's office occurred at his office in the Aala Market?

A. Yes sir.

The COURT: Proceed.

Mr. ULRICH: You've told us, Mr. Cunningham, that oysters——

A. Oysters——

Q. What else?

A. Strawberries, pumpkin——

Q. Were not delivered?

A. Not delivered. I believe that cooking bananas—I am in doubt on this cooking bananas.

Q. Oysters, strawberries, and pumpkin; and some doubt about the cooking bananas. Was the limu delivered? [424]

A. Yes sir.

Q. The opae—was that delivered?

A. Opelu.

Q. Opae?

A. It's opelu.

Q. Was that delivered?

A. That was delivered.

Q. The mixed nuts?

A. That was delivered.

Q. The candy?

A. That was delivered.

Q. After dinner mints?

(Testimony of John Edward Cunningham.)

A. Yes sir.

Q. Hot pepper?

A. Yes sir.

Q. And, to the best of your recollection, the balance of the bill, excepting those items that you've designated, is that right?

A. The rest were delivered, yes sir.

Q. Now I'll show you the other two exhibits, being the Government's Exhibits "D" and "E," the one being a carbon copy so far as the typewriting material is concerned, of the other; and ask you when you first saw either one of those documents?

A. This is the camouflaged bill.

Q. Whatever it is, when did you first see it?

The COURT: Mr. Ulrich is asking you when you first saw it.

A. I might have seen, not this bill but a copy of it, in Lee Chong's office.

Q. When?

A. When Mr. Mookini afterwards went down to camouflage the bill.

Q. When he went down to camouflage the bill?

A. Yes.

Q. Were you with him?

A. I don't think I was; he went down himself.

[425]

Q. What do you mean, you "might have seen it in Lee Chong's office"?

A. Afterwards, when I went down to place an order.

Q. You mean, you might have seen it some time later?

A. Yes.

Q. Well, did you?

A. I might have, I might not; I'm not sure.

Q. I call your attention, Mr. Cunningham, to the fact that this other bill here does have squash and spinach, two things that you have been referring to as not having been delivered. What were you thinking about when you told us that the squash and spinach were not delivered, when it didn't appear on the original bill at all but only on this bill which you never saw unless you saw it at some time in Lee Chong's office?

A. This is the camouflaged bill, as I say.

Q. I understand it is, but is it the bill you didn't know anything about?

A. No sir, I didn't know nothing about it.

Q. Well, how did you commence to think about the articles that appeared on that bill in telling us of the goods that weren't delivered?

A. Because I remember seeing a bill like this afterwards in Lee Chong's office; it was a camouflaged bill;——

Q. But look at what's camouflaged.

A. I know it's camouflaged.

Q. Just look, though; the very articles which were delivered, actually, you say, these things were delivered, those are the articles that have been changed?

(Testimony of John Edward Cunningham.)

A. Have been changed to spinach, lima beans, squash. [426]

Q. That isn't camouflaging something that wasn't delivered; it's camouflaging something that was?

A. Because they weren't allowed to purchase that.

Q. They weren't allowed to purchase limu from the company fund?

A. Limu probably they had, but not candy and the rest of it.

Q. But what I am asking you to see is the fact that the things you say are camouflaged there are not the things you say weren't delivered, but a lot of things that were delivered.

A. It was delivered; as I am saying, it's been delivered.

Q. You say, for example, that the pumpkin wasn't delivered?

A. The pumpkin wasn't delivered.

Q. No, but there's the pumpkin that comes back in the changed bill?

A. Yes, in the changed bill.

Q. With the lima beans and the spinach; don't you see there's no sense to it; the pumpkin is still on the changed bill?

A. This is the camouflaged bill.

Q. That is what I'm saying, it's on the "camouflaged" bill; what's the meaning of it all?

A. This 400 pounds of pumpkin was camouflaged for the flowers.

(Testimony of John Edward Cunningham.)

Q. The 400 pounds of pumpkin was camouflaged for the flowers?

A. Lee Chong fixed it up some way; it was camouflaged for the flowers we got, because we wasn't allowed to buy flowers.

Q. How do you figure out that the pumpkin was camouflaged as flowers rather than the oysters, for example?

A. Not the oysters. Lee Chong told me about the oysters.

Q. Lee Chong told you—they're both about the same; one is $17.00, and the other is $17.50, isn't it?

[427]

A. No sir; the pumpkin has been camouflaged there under flowers or something else.

Q. A lot of things are camouflaged there that were actually delivered?

A. Here on the delivery slip we got our candy, we got our dried opelu, after-dinner-mints, assorted candies, assorted nuts; we received all of that, but we received no fresh oysters.

Q. All right, Mr. Cunningham, you went down or were sent down by Mr. Miles, were you not, to make certain statements to Mr. Lloyd, or to his office, with reference to charges that Mr. Miles had made against Mr. Mookini?

A. Mr. Lloyd sent for me.

Q. Yes; you went down, anyway, to make a statement?

A. I went down, but not to Mr. Lloyd.

(Testimony of John Edward Cunningham.)

Q. No, you made it to Mr. Matson, I believe, did you not?

A. Yes. Mr. Lloyd said nothing to me.

Q. Whoever in the office you made a statement to, you were called down there to make a statement in connection with this investigation which was going on, and the person you made the statement to was Matson?

A. Yes sir.

Q. At that time did you make a statement telling all about this personal account of Mr. Mookini that had been camouflaged, or did you merely tell him about these bills that we're talking about here now?

A. I told Mr. Matson the same things as I am telling the Court here.

Q. You did? [428]

A. Yes, on these camouflaged vouchers;——

Q. Oh yes, on these camouflaged vouchers; that probably was fixed——

Mr. MOORE: Let him finish, Mr. Ulrich.

A. (continuing): and Mr. Matson said to me then, "What are you going to do about it; you can't do nothing about it; you better forget about this." So I took the voucher that I had in my pocket, and I showed him about this 500 oysters, and this liquor coming out; I says, "How about this?" He says, "You're just as guilty as Mookini on this thing." I says, "What are you worrying about me?" "Well," he says, "if I was you, you just better

(Testimony of John Edward Cunningham.)

forget about it and say nothing to nobody about it." It seems that Matson was covering Mookini on this thing.

Q. Oh yes, just a moment. You told Matson about the liquor?

A. Yes sir.

Q. Matson told you to forget it?

A. To forget it, "say nothing to nobody."

Q. Did you tell him or anybody down there anything about these personal groceries charged, and all that sort of thing?

A. I had to tell him according to the camouflaging on the bill that had covered the false voucher.

Q. The April, the June, and the May bill, did you go into that with him, too?

A. Yes sir; everything was there; it was only him and I in the room there.

Q. You never made any statement to Mr. Lloyd?

A. No statement at all; Mr. Lloyd asked me nothing about it; he says, "Go in the next door; Mr. Matson wants to see you." And when I showed him that voucher he asked me to get a copy [429] of that voucher; I says, "I want this bill back"; he says, "You'll get it back"; but he never returned it to me until I sent Captain De Ville after it and told him what he had that belonged to me there.

Q. What are you talking about; it was up in the office?

A. I turned that over to Mr. Matson; Mr. Matson was to take a copy of it and promptly return it to me.

(Testimony of John Edward Cunningham.)

Q. Mr. Matson was the officer investigating these charges?

A. Supposed to have been.

Q. You know that, don't you?

A. I don't know that.

Q. He was in Mr. Lloyd's office at the time?

A. Yes.

Q. Mr. Lloyd told you to carry on the investigation; told you to go in and talk to him?

A. He told me nothing.

Q. He told you to go in and talk to him?

A. Yes, he told me to go in and see Mr. Matson; that's all he told me.

Q. On this Mothers' Day luau bill, do I understand that you did or did not know anything about the changes made in that bill; that's the September bill?

A. I believe there were changes made in that bill; may I have a look at it.

Q. Sure; that's your signature there (indicating)?

A. Yes sir.

The COURT: Which exhibit is that?

Mr. ULRICH: Pardon me; that's Government's Exhibit "G".

A. These changes were made here on the 15 gallons of mayonnaise, mushrooms 10 pounds, 300 pounds pumpkin,—— [430]

Q. Just a moment; I want to ask your whether you had anything to do with the changing or revising of that bill?

(Testimony of John Edward Cunningham.)

A. Mr. Mookini and Mr. Lee Chong tended to that bill about the changing of this stuff.

Q. Mr. Mookini and Mr. Lee Chong did?

A. About the changes, because these things, what we had in place of the firewood and so on, an item of 72 dollars and some odd cents, that had to be camouflaged.

Q. So that Mr. Mookini and Mr. Lee Chong were the ones that arranged for the changing of that bill, is that right?

A. They did.

Q. How do you know that they did?

A. Because I gave my list of what I wanted for the luau, because Captain Miles asked for that list, and after they had the list, I believe, on hand, Mr. Mookini went down to Lee Chong and placed the order; he gave the order a week ahead of time, so some of the items I wanted were cut down and some were raised.

Q. So he did all that changing?

A. And that camouflaging was done for the other stuff, the bill of $72.00.

Q. And did Mr. Lee Chong and Mr. Mookini make the changes in the bill when it was finally put in?

A. I believe the next day Captain Miles went down and had that thing straightened out.

Q. As I understand you, this firewood and these various items came out there all right?

A. They came out there; I didn't order no firewood and no wire——

(Testimony of John Edward Cunningham.)

Q. They were delivered? [431]

A. They were delivered.

Q. Are you suggesting that Mr. Mookini used all of the leis for himself and the flowers that day; you had some evidence about leis and flowers?

A. He coudln't have used them all for himself; he got them for the guests that were coming out there.

Q. Well, he was distributing them?

A. I didn't see him distribute them, but I noticed all of the girls and all of the guests having ginger leis.

Q. I just want to get your idea; were the leis improperly converted by Mr. Mookini, or taken to his tent, or was everything all right so far as the leis were concerned?

A. Everything was all right so far as that's concerned, but having the Fund money paying for the leis I think is a different story.

Q. How about the cigarettes and cigars, he kept all those himself, did he?

A. He kept those.

Q. Nobody else got those cigars and cigarettes but Mr. Mookini?

A. I don't know about that.

Q. What were you trying to tell us on your direct examination; that he did, or did not?

A. He had that stuff in his tent.

Q. He had cigars in his tent; you don't know whether he distributed them from his tent?

A. No, but I noticed the young ladies were smoking cigarettes all day long.

(Testimony of John Edward Cunningham.)

Q. Wasn't that what they were out there for?

A. Sure they were out there for a good time.

Q. I mean, the cigars to be smoked at the function; wasn't [432] that what they were there for?

A. I think so; not to eat.

Q. Did he take the candy to his own tent; anything else you want to say that he took to his own tent?

Mr. MOORE: What's that?

Mr. ULRICH. I am just giving him a chance to put some other things in Mr. Mookini's tent.

A. That's up to you; you can question me.

Q. I am questioning you; I am asking whether there's anything else he took, any other things besides candies, cigarettes, and cigars——

Mr. MOORE: I object to the question—putting candy in Mookini's tent.

Mr. ULRICH: I beg pardon; I'll take out the candy. Besides cigarettes and cigars and flower leis, was there anything else that Mr. Mookini took to his tent?

A. No, not that I remember.

Q. Mr. Cunningham, did or did not you have oysters at the dinner out there Mothers' Day?

A. Yes, we did; we had canned oysters.

Q. Was it in stew, or something of that kind?

A. Oyster stew; I made the menu of that day there; but that menu disappeared off the files.

Q. Mr. Cunningham,——

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. Were you in the habit of going down town to the people with whom the Camp was dealing and endeavoring to get a split with them on orders that were delivered to the Camp?

A. No sir.

Q. You didn't do that?

A. No sir. [433]

Q. Isn't it the fact, Mr. Cunningham, that you did on an order for a slicing machine from the Hurd-Pohlmann Company which came out to the Camp, in the amount of $180.00, request and ask for payment to you of a commission or something in that nature in the amount of $18.00?

A. No sir; that's a lie.

Q. Is it not true that you asked—did not Mr. Glowenlee, who was employed by the Hurd-Pohlmann Company—my question is, is it not the fact that when you were speaking to this man you said that you wanted a payment of $18.00 or thereabouts for yourself on account of a sale to the Camp of a slicing machine which was billed to the Camp at something in the neighborhood of $180.00—that's a lie?

A. That's a lie. I never knew a slicing machine was coming out until Mr. Mookini brought it out or had it sent.

Q. You never knew a slicing machine was coming out until Mr. Mookini brought it?

A. Yes, he brought it out.

(Testimony of John Edward Cunningham.)

Q. You never had any talk with Mr. Glowenlee or anybody else connected with the Hurd-Pohlmann Company about payment to you of any amount of money, of $18.00 or anything else?

A. No sir.

Q. That's true, is it?

A. Yes.

Q. And your testimony now is just as true or just as false as anything you've testified to here?

A. It's true.

Q. And no more true or no less true than anything you testified to here?

A. I never knew nothing about this machine coming out; the [434] machine was left out there on trial, and the way that machine was ordered was that I begged Captain Miles to buy the machine because we needed it in the worst way——

Q. I'm not concerned in that; what I am interested in is that, when you say there never was any conversation in which an amount of $18.00 or any other amount was discussed for payment to you on account of that delivery——

A. No sir, that's a lie.

(Recess—10:00 to 10:10 a. m.)

The COURT: Were you through with the cross-examination, Mr. Ulrich?

Mr. ULRICH: Yes, Your Honor.

The COURT: The Court so understood it.

(Testimony of John Edward Cunningham.)

Re-Direct Examination

By WILLSON C. MOORE, Esq.

Q. Mr. Cunningham, you saw this man Glowenlee out at the C. C. C. Camp when this meat cutter, or whatever it was, was delivered?

A. Yes sir.

Q. You had a conversation with him out there?

A. Yes, I had a conversation with him in the kitchen there.

Q. Was that about a sum of about five dollars and something?

A. He came out; before that time he was out there and he was speaking to Mr. Mookini about I receiving some graft money on purchases before that time; we wanted some knives, we had to get some knives in the worst way; Diamond-Hall was cleaned out; and I told Mr. Mookini the one place we could get them was Hurd-Pohlmann; so the office here gave me an order to go down there and order them; so while they were [435] wrapping up the knives and making out the bill there I signed for it; Mr. Byer and Mr. Pohlmann there were having some conversation there, and he says, "Mr. Pohlmann, we ought to do something for Jack here, he's always been good to us, always put us wise when there's something new going up"; so when I was ready to walk out Mr. Byer called me and handed me $5.00, saying, "Here Jack, go buy yourself a box of cigars."

Q. Did you take the $5.00?

A. I did.

Q. Did you buy the cigars?

A. Certainly; and I told Captain Miles that night about it.

Q. You had a talk with this Glowenlee one day?

A. Afterwards he came out there, and I understand Mr. Mookini accused me of receiving graft from Hurd-Pohlmann; I says, "I don't receive no graft; if there's anybody getting graft, it's you." So I went to Captain Miles and told Captain Miles about this; he says, "Don't you worry about that; I'll take care of that." So, later on, when the machine came out, we was trying the machine out there, and I says to him,——

Q. Says to "him"?

A. To this salesman.

Q. Glowenlee?

A. Yes; I says, "What's this big idea of you coming out here and telling Mr. Mookini that I am receiving graft?" He says, "I didn't say nothing like that." I says, "You're bringing a slicing machine out here, and if they buy it I might as well go down and get the graft that's coming to me; might as well have the name as the game;"—just like that, in a joke; and that's all what I said. The machine wasn't purchased then, it was only on trial.

Q. Mr. Cunningham, with reference to these vouchers, calling [436] your attention to United States Exhibit "B," which is the original of

(Testimony of John Edward Cunningham.)

the voucher of May 12th which bears your initials, which is in the sum of $231.00, and contains the items of oysters, strawberries, and pumpkin; and calling your attention to Exhibit "G", which is the voucher of September 1st which bears your initials, which has on it the items of the yams, the honey-dew melons, and the pumpkin, dried mushrooms, and 15 gallons of mayonnaise; as I understand it, when these groceries came out you initialed these vouchers?

A. Yes sir.

Q. And gave the initialed vouchers—it may be the original or it may be the copy——

A. Yes sir.

Q. (continuing): back to whoever delivered the goods?

A. Yes sir.

Q. And then you have a retained copy?

A. Yes sir.

Q. And what did you do with the retained copy?

A. I have orders to turn them in to the office as soon as they come in.

Q. After they're turned in do you have anything to do with them after that?

A. Nothing to do with them; the mess officer takes care of them, sir.

Q. Then calling your attention to United States Exhibit "H", which is a correction or a voucher correcting United States Exhibit "G" by deleting therefrom the items of 25 pounds of yams, 6 cases honey-dew melons, 300 pounds pumpkin, 10 pounds

(Testimony of John Edward Cunningham.)

mushrooms, and 15 gallons of mayonnaise, did you [437] ever have anything to do with that particular document?

A. You mean, of the camouflaging of them?

Q. No; the altering of that—deleting the goods.

A. No, I didn't; only when Lee Chong come out and brought these things he told me that these were camouflaged for the stuff that came out, such as the wire, the firewood, and so on.

Q. But you had nothing to do with these others?

A. Nothing, sir.

Q. The only ones that you had anything to do with are the vouchers——

A. Yes sir.

Q. (continuing): that come with the loads——

A. Yes sir.

Q. (continuing): at the time of their delivery?

A. Correct, sir.

Mr. MOORE: That's all.

Re-cross Examination.

By BARRY S. ULRICH, Esq.

Q. As to this later conversation with Mr. Glowenlee, you've said that, as you understood it, Mr. Mookini had been making the charge that you had been getting graft from Mr. Glowenlee, or something of that kind, is that right?

A. He told me, "I understand you're getting some graft from Hurd-Pohlmann."

Q. "I understand you're getting some graft from Hurd-Pohlmann"?

(Testimony of John Edward Cunningham.)

A. I says, "I'm not getting no graft; if there's anybody getting graft, it's you." [438]

Q. Whereupon you charged him with getting graft?

A. I did not charge him; I told him that.

Q. Well, you knew perfectly well that you didn't know anything of the kind, any more than you know the rest of this "camouflaging"; you didn't have reason to believe he was getting graft from Hurd-Pohlmann?

A. No sir.

Q. Why did you say that, then; for the same reason you have been telling these other things?

A. Why sure, he says that to me.

Q. Don't you know that Mr. Glowenlee had gone out to the Camp after you tried to get that $18.00, and complained that they were getting to the point where they couldn't do business with you people without being hounded for a "split"?

A. We had no machine then.

Q. Don't you know that that's what happened; that Mr. Glowenlee went and complained either to Mookini or to Miles to the effect that it was getting to be a pretty bad situation when he couldn't do business without being hounded for a "split"?

A. No sir; he was out there continually, selling sporting goods and everything else out there; we had no machine and at that time had no intention of buying it.

(Testimony of John Edward Cunningham.)

Q. Don't you know that he was the one that made the charge, or whatever it was—not Mr. Mookini?

A. Mr. Mookini made the charge to me; not he.

Q. Don't you know that's what he was talking about, because of the complaint that Mr. Glowenlee had made of your trying to hold him up for a "split" on that meat slicer order?

A. We had no intention of buying a slicing machine out there. [439]

Mr. ULRICH: All right; that's all.

Mr. MOORE: That's all.

HERBERT LLOYD

was duly called and sworn as a witness for the Plaintiff, and testified as follows :

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Herbert Lloyd.

Q. How old are you?

A. 21 years old.

Q. Were you ever a member of the C. C. C. Camp, at Schofield Barracks?

A. Yes sir.

Q. When was that?

A. 1934.

(Testimony of Herbert Lloyd.)

Q. And for how long a period were you out there?

A. Eight months.

Q. What?

A. I was out there for about eight months.

Q. And what particular duty were you assigned to there most of the time?

A. I was a mess officer boy and a cook.

Q. Worked in the kitchen?

A. In the kitchen too.

Q. Do you know Mr. Miles?

A. Yes, I do.

Q. What was he out there?

A. He was the Camp Director.

Q. Do you know Mr. Mookini?

A. Yes sir.

Q. What was he out there? [440]

A. As a lieutenant, at the mess hall, in charge of the "grub".

Q. In charge of the mess—that's the "grub"?

A. Yes.

Q. By that you mean the food?

A. Yes.

Q. Do you know Mr. Cunningham?

A. Yes, I do.

Q. What was he doing out there, if anything?

A. Mr. Cunningham was the chief cook out there.

Q. Do you remember Mothers' Day?

A. Yes sir, I do.

(Testimony of Herbert Lloyd.)

Q. Last year?

A. Yes sir.

Q. Were you out at that Camp?

A. Yes sir.

Q. Did they have anything unusual at all at that time; did they have a party or anything like that?

A. Yes sir, they did.

Q. Do you know Lee Chong?

A. Yes sir, I do.

Q. Where did you first see him?

A. Out at the C. C. C. Camp.

Q. Around Mothers' Day, did you see him around at that time?

A. Yes sir, I did.

Q. Where did you see him?

A. He came with a vegetable wagon around to the back door of the kitchen.

Q. That's of this Camp?

A. Yes sir.

Q. And what did he—what was he doing with the vegetable wagon?

A. They unloaded the vegetables and everything, and there was a little box that was left in the back of the car, and Mr. Lee Chong brought the box and gave it to Mr. Cunningham.

Q. Where was that box put?

A. In the storeroom, sir. [441]

Q. Did it have any writing on it?

A. Yes sir.

(Testimony of Herbert Lloyd.)

Q. What was on it?

A. "Mr. Robert Mookini, please handle with care."

Q. Did you ever see the contents of that box, that is, what was inside of it?

A. There was a boy in the storeroom, he was opening groceries; and this box was in there, so he opened this box up; so Mr. Cunningham went in there and scolded him, "Why you want to open this box; this belongs to Mr. Mookini." So he had half of it out, and it had some straw in there, and it had three quarts of gin and three quarts of whiskey in there, sir.

Q. And did this box stay in the storeroom?

A. No sir; Mr. Cunningham and I, we removed the box about 5 to 5:30 over to Mr. Mookini's tent.

Q. Was Mr. Mookini in the tent when you delivered it?

A. Yes, Mr. Mookini was in the tent.

Q. Did you get a drink out of this gin?

A. Yes, he gave me a shot of it.

Q. When was this?

A. I think that's the day after, sir.

Q. Any flowers come out there that day?

A. Yes; they got not much flowers; I called them a little carnations and a little gardenias; not plenty at all.

Q. What were their colors, if you remember?

A. There was a little white carnations and white gardenias.

(Testimony of Herbert Lloyd.)

Q. Any red flowers at all?

A. I didn't see any red ones; that's all, sir.

Q. After this case started—that is, not the actual trial, but after these men were indicted, did you see Mr. Mookini?

A. Where at, do you mean? [442]

Q. Any place?

A. When—after the delivery——

Q. No, no; after you left the C. C. C. Camp.

A. Yes sir, I did.

Q. Where do you live at?

A. At Kaimuki.

Q. Did you ever see Mr. Mookini at Kaimuki where you live?

A. Yes sir.

Q. And when was that?

A. That was on the 9th of May.

Q. Of this year?

A. Yes sir.

Q. This month?

A. Yes sir.

Q. Have any conversation with him?

A. Yes sir.

Q. What was that conversation, to the best of your recollection?

A. He wanted to know what's the names of the different cooks out there, and he wanted to know Morgan Paris, Harry Nye, Tit Sing Wong, Freeman Onesto, and myself; he asked me if I was going to come up into Court here; I told him I

(Testimony of Herbert Lloyd.)

don't know if I was coming up or anything, I didn't have any sort of papers to come into court or anything of the kind; so he asked me certain kind of questions; I couldn't understand Mr. Mookini so well, sir.

Q. Say anything about his job?

A. Yes, he mentioned about him getting a job at this Territorial Hospital, he was going to be some kind of foreman out there, going to hire men and stuff.

Q. Say anything else about this job?

A. Oh, that he'll get us boys jobs over there.

Q. Get what?

A. Get us boys some jobs over there. [443]

Q. Going back to this day that you got this box of booze that came on that truck, did you see any fresh oysters out there?

A. No sir, I did not see any fresh oysters, sir.

Q. How about spinach?

A. I didn't see any spinach; we only have canned spinach up there, that's the only thing; we never use fresh spinach.

Q. You use canned spinach?

A. Yes sir.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. You say you are 21 years old?

A. Yes sir.

(Testimony of Herbert Lloyd.)

Q. What was your connection with Cunningham out there at that place; what were you doing?

A. I was the mess boy for the officer, and as a cook, sir, too.

Q. Have you talked over with Cunningham what you were going to testify to here today?

A. No sir, I did not, sir.

Q. You didn't?

A. No sir.

Q. You haven't seen Mr. Cunningham or talked to him about this case?

A. Oh no, I seen him a lot of places.

Q. You have seen him?

A. Yes sir, excuse me, I talked about the case; I did; I talked to Mr. De Ville and Mr. Moore.

Q. No, no, I'm talking about Cunningham; has he told you or have you told him what you were going to say here today?

A. No sirree.

Q. You haven't talked to him at all?

A. I talked to him, but he didn't mention about the case. [444]

Q. You have been with him in the hall straight along since this case started?

A. Yes sir.

Q. You have talked about everything except the case?

A. No sir, we didn't even get near the case; he didn't tell me to tell this or that.

Q. I'm not asking you as to whether he asked you what to say, but merely whether you talked

(Testimony of Herbert Lloyd.)

about the case; and as I understand, out there you have been with him every day, day after day, you have talked about everything except about this case?

A. What do you mean to say—about Mookini?

Q. About what happened, about what you were going to say, about whether there was booze?

A. No, we haven't even said something about booze.

Q. You haven't said anything about that at all?

A. No sir; I have that on my own self.

Q. And you haven't even talked to Mr. Cunningham about it?

A. About the booze?

Q. Yes.

A. No sir, I did not.

Q. During all the time you have been standing with him in the hall every morning?

A. No sir.

Q. Did you talk to him about any part of the case?

A. Like about that piece of paper, the day the liquor came in, that Mr. Cunningham took over the piece of paper to him and have him sign when he was eating at the table.

Q. You talked to him about that?

A. Yes sir.

Q. When did you talk to him about that? [445]

A. I can't remember the date, sir.

Q. Mr. Cunningham hasn't threatened that he's going to do something to you if you didn't testify in a certain way in this case?

(Testimony of Herbert Lloyd.)

A. Nothing of the kind, sir.

Q. You've told about the time when you went out to see Mr. Mookini on the 9th of May, haven't you?

A. Yes sir.

Q. You've said that he asked you for the names of the cooks and all that sort of thing?

A. Yes sir, I did, sir.

Q. Did you tell him anything about Cunningham that day?

A. No sir.

Q. Did you mention Cunningham?

A. No sir, I didn't mention Cunningham's name. He wanted to find out things about Mr. Cunningham and Mr. Miles.

Q. But you wouldn't tell him?

A. No sir.

Q. So you didn't say anything about Cunningham?

A. No sir.

Q. You didn't say anything about what Cunningham said he was going to do if you would testify in a certain way in this case?

A. No sir, he didn't tell me that.

Q. But you didn't say anything to Mookini about that?

A. No sir; Mookini was there with a piece of paper, and he was trying to catch me on things, he was questioning about some things; he wanted me to say who told about the liquor proposition.

(Testimony of Herbert Lloyd.)

Q. He wanted you to say who told about the liquor proposition?

A. Yes sir. [446]

Q. What did he say?

A. He wanted me to say if I was going to testify about the liquor proposition.

Q. Did he ask you what you were going to testify to?

A. Yes sir.

Q. Mr. Mookini?

A. Yes sir.

Q. Why didn't you tell that to Mr. Moore when he was questioning you about what was said out there?

A. I couldn't hear him so well; I didn't understand him so well, sir.

Q. As a matter of fact, Mr. Cunningham hasn't said anything to you at all about what you were going to testify to?

A. No sir.

Q. On Mothers' Day out there at the Camp—by the way, had you been particularly working for Mr. Cunningham at the Camp, I mean, more than anybody else; did you help take care of him in any way, act as a sort of valet, something of that sort; do you know what I mean?

A. No.

Q. Take care of his clothes; anything like that?

A. Never.

Q. Never did that?

A. Never took care of his clothes.

(Testimony of Herbert Lloyd.)

Q. Didn't help him in his tent or carry things to him?

A. He didn't have a tent.

Q. Whatever he did have.

A. What do you mean; carry liquor or stuff?

Q. No no, I'm not talking about liquor now; just waiting on him?

A. Only when he was sick, I took three boiled eggs and a [447] piece of toast, that's all, sir.

Q. On this Mothers' Day, or the day before Mothers' Day, you saw Mr. Lee Chong come out there, did you?

A. Yes sir.

Q. Do I understand you to say that you saw a box taken out of his car?

A. Yes sir.

Q. How big a box was this?

A. It was about this size (indicating), and about that wide (indicating); it's something like what you put these plates in, you know, that kind of a box, something like these thin boards what you put —it's a thin box something like balsa wood.

Q. A tin box?

A. A thin box.

Q. Wood box?

A. Yes sir.

Q. What were you doing out there that morning?

A. Me, that morning?

(Testimony of Herbert Lloyd.)

Q. Yes.

A. I was on duty.

Q. What were your duties?

A. My duty was to set the officers' table, and I stayed all night awake to help them pick up things.

Q. What time did the load get out there?

A. I don't know exactly what time; I can't tell you what time.

Q. Generally, was it toward noon, or morning, or afternoon?

A. I can't tell you what time it was; I can't say it was noon or later.

Q. You know very definitely that it was 5:30 when you took this box across the street?

A. Yes sir. [448]

Q. How do you happen to know it was 5:30?

A. Between 5 and 5:30, about that.

Q. Between 5 and 5:30 you took the box across the street?

A. Yes sir.

Q. And you've no idea at all what time the box was received out of the wagon?

A. No sir, I wouldn't have no idea; I didn't look at a watch.

Q. Did you look at a watch when you took the box across the street?

A. Yes sir, I was looking at a watch; I was goin to a show that night.

Q. So you took your watch out?

A. No sir, I didn't take my watch out; there was a watch right there in the kitchen.

(Testimony of Herbert Lloyd.)

Q. So you looked at the watch or clock?

A. It was a clock, yes sir.

Q. What time was it when you looked at the clock?

A. It was about 5:30 or 5.

Q. Then you took the box across the street?

A. Yes sir.

Q. That was when you took the box across the street?

A. Yes sir.

Q. When this load of groceries arrived you didn't look at a clock at all?

A. No sir; I was busy.

Q. Did you see everything that was taken out of that wagon?

A. No, I didn't see everything; there were some K. P.'s carrying the groceries in.

Q. Were you carrying them in?

A. No sir, I was not carrying them in. [449]

Q. The only thing you do remember—can you remember anything else that was taken out except this one little box?

A. Oh, something like potatoes.

Q. You remember seeing some potatoes taken out?

A. Yes sir; it was in back in the lower end of the car, in the back end was where it was.

Q. And the potatoes and the box are the two things you remember?

A. That's all I remember seeing, sir.

(Testimony of Herbert Lloyd.)

Q. When did you find out that Mr. Mookini's name was on this box?

A. When Ting Sing Wong opened the box.

Q. You didn't know when it was taken out of the car, then; you didn't see the box then?

A. Mr. Lee Chong was talking to Mr. Cunningham, sir, and Mr. Cunningham took that into the storeroom, away down in the end of the storeroom there.

Q. I'm asking you when you saw the name of Mookini on the box.

A. Right in black and white; it had black paint on top.

Q. When did you see it?

A. That day.

Q. But not when the box was taken out of the car?

A. When the box was in the storeroom.

Q. And you opened the box?

A. I did not open the box, sir.

Q. The other boy opened the box?

A. Ting Sing Wong opened the box.

Q. Ting Sing Wong opened the box and you saw the different bottles in the box? [450]

A. I did not see; Cunningham called me to come in.

Q. Didn't you see it?

A. Cunningham called me to come in.

Q. I don't care how you got there; did you see it, or didn't you see it?

A. What—the name of Mookini on top?

(Testimony of Herbert Lloyd.)

Q. No, the bottles on top.

A. Sure; they had straw on the top half of it; it was open.

Q. You saw them in the box, then?

A. Yes sir, I did, sir.

Q. What did you mean by saying that you didn't see—or did you say that?

A. I didn't say that; I didn't understand you.

Q. There were three bottles of whiskey and three bottles of gin?

A. Yes sir.

Q. You counted them?

A. Sure, sir.

Q. What kind of whiskey was it, do you know?

A. I don't know the name, sir.

Q. But do you know what kind of gin it was?

A. I couldn't say what kind, but I know the kind of gin he gave me to drink.

Q. What kind?

A. I think it was Manila gin.

Q. That's the kind he gave you to drink?

A. Yes, and I dumped it in the back.

Q. You told us it was in the same bottle?

A. I did not say it was the same bottles.

Q. Did you ever see any liquor in Mr. Mookini's place besides these bottles?

A. Sure; a lot of times, sure. [451]

Q. Did you ever know where he got his liquor from?

A. I don't know where did he get his liquor from; I just remember that day he told me to get

(Testimony of Herbert Lloyd.)

his suitcase full of booze and told me to watch Harry Colman, if you want to know.

Q. Where did you go to get booze in the suitcase?

A. I did not go to get booze in the suitcase; I went to one of the doctors that help the doctor, I went in his tent; he told me go get a suitcase about that size (indicating), and Mr. Mookini laid his liquor in there.

Q. Was that some of this liquor, or other liquor?

A. I don't know if that was some of that liquor, sir.

Q. And you got a drink of gin the next day?

A. Yes sir.

Q. And you didn't see any spinach out there?

A. No sir.

Q. And, so far as you can recall, there were only white flowers.

A. White flowers—carnations and gardenias, sir.

Q. But white ones only?

A. Yes sir, that's all I seen, sir.

Q. I am going to ask you just one more question——

A. Go ahead.

Q. Isn't it a fact that all the time you lived out there and worked out there——

Mr. MOORE: I can't hear you.

A. I can't hear you either.

Mr. ULRICH: Isn't it a fact that all of the time you worked out there at the Camp you lived

(Testimony of Herbert Lloyd.)

in mortal terror of this man Cunningham—he threw knives at you and did all sorts of things? [452]

A. Cunningham throw knives at me?

Q. Yes.

A. Only one time he was mad, he threw an ice pick at me; that don't mean a thing, he didn't even hit me, it just went by me; I was "getting his goat" every day swearing at him and doing everything.

Q. You weren't terrified by this man then, were you; you weren't afraid of him?

A. Who, Cunningham?

Q. Yes.

A. I sure wasn't afraid of him.

Q. You were not afraid of him?

A. No sir.

Q. You knew about what he was and who he was, didn't you?

A. Not Cunningham?

Q. Yes.

A. No sir; you see, I just met him at the Camp when I was out there, sir.

Q. He gave you that drink out there when he asked you to help him pack his suitcase?

A. Who?

Q. Mr. Mookini.

A. No sir.

Q. He didn't?

(Testimony of Herbert Lloyd.)

A. No sir. After May 12th he gave me the drink, the next day.

Q. You don't remember—do you remember Mr. Mookini giving you a drink in October, just before you left the Camp?

A. No sir, I don't remember that, sir.

Q. He didn't do that?

A. No sir, I don't. [453]

Q. You took the bottle and hit it behind Miles then?

A. Who, me—took the bottle and hid it behind Miles?

Q. Yes.

A. No sirree, sir.

Q. Don't you know that's the only time he ever gave you a drink?

A. Who, Mookini?

Q. Yes.

A. He bought me beers, I know that much.

Q. I am talking about gin and whisky—hard liquor.

A. That's the only time, after May 12th, next day he gave me the gin.

Q. That's the only time?

A. Yes, that's all I remember, sir.

Q. Have you ever been on the witness stand before in a courtroom?

A. No sir, this is my first time, sir.

Mr. ULRICH: That's all.

(Testimony of Herbert Lloyd.)

The COURT: One more question. You say you live in Kaimuki?

A. Yes sir.

Q. Did you go to Mookini's house on May 9th, or did he come to your house?

A. He came to my house, sir.

The COURT: That's all.

JAMES R. MAHAFFY

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. James R. Mahaffy. [454]

Q. You are commonly known as "Major" Mahaffy?

A. Yes sir.

Q. In 1934 were you connected with the Civilian Conservation Corps?

A. Yes sir.

Q. Where?

A. At Schofield.

Q. That's on this Island?

A. Yes sir.

Q. In what capacity?

A. Director.

(Testimony of James R. Mahaffy.)

Q. Did you have an assistant director?

A. Yes sir.

Q. Who was he?

A. William E. Miles.

Q. Was there a man out there by the name of Mookini?

A. Yes sir.

Q. And Cunningham?

A. Yes sir.

Q. What was Cunningham's position?

A. Cook.

Q. Mookini's position?

A. Recreation Officer; and along about the latter part of March, in addition to his other duties, Mess Officer.

Q. Prior to Mookini becoming Mess Officer who had that position?

A. Mr. Gibson.

Q. Who appointed Mr. Mookini, if you know, to act as Mess Officer?

A. I did.

Q. And how did that come about?

A. Well, we had an organization planned, first the director, then the assistant director, then on down the line, different ones would be under the assistant director; all duties of the Camp came to me through the assistant director, and all the orders and requests that I wanted went from me [455] through the assistant director to the various ones; and my assistant director Mr. Miles and I talked of the fact that Mr. Gibson—do you want me just to explain?

(Testimony of James R. Mahaffy.)

Q. I just want to know how it happened—if you can give us in brief the reasons for the appointment of Mookini, if there were any.

A. Yes sir, Mr. Gibson as quartermaster was a very busy man, and Mr. Miles and Mr. Mookini and I talked together, and we figured that we would have more efficiency by having Mr. Mookini appointed as Mess Officer, and Mookini and Mr. Miles thought that they could do better in buying and other ways of running the Mess.

Q. Was this appointment made at Mookini's request?

A. Mookini and Miles and I, the three together; we got together there in the office and talked the matter over.

Q. When did this Camp actually start to operate?

A. March 7th.

Q. When you first started where did you purchase your foodstuffs?

A. Through the Quartemaster at Schofield.

Q. Particularly confining yourself to fruits and vegetables, where were those purchased at the inception of the Camp, if you know?

A. Through the vegetable man connected with the Post Exchange at Schofield.

Q. Do you know who that man was?

A. I couldn't say positively his name, no sir; I could refresh my memory from the records and tell you.

(Testimony of James R. Mahaffy.)

Q. Did you keep a monthly record of what took place out there?

A. Yes sir. [456]

(Mr. Moore shows document to Mr. Ulrich)

Mr. ULRICH: I have no objection to this.

Mr. MOORE: Is that the——

A. Yes sir, the council.

Q. That is, this is the "council" book?

A. Yes sir.

Q. Will you look at that and refresh your memory as to the name of the person, if you can.

A. I don't see it on there.

The COURT: To save time, Major; would you know the name if you heard it?

A. Yes sir.

Q. Was it Chun Hoon?

A. Yes sir, that was right; I thought it was, but I wouldn't be positive about it.

Mr. ULRICH: I would like to have that document identified that you referred to.

Mr. MOORE: This is just for the purpose of refreshing his memory.

Mr. ULRICH: That's all right; I want the book to be identified now—I don't know what it is.

Mr. MOORE: It appears to be the record that he stated he thought was in here was not in here, so he didn't refresh his recollection.

Mr. ULRICH: He's identified it as the "council book"; for whatever it's worth let's have it.

(Testimony of James R. Mahaffy.)

Mr. MOORE: Major Mahaffy, what was the book you referred to?

A. That's what we term a "council book"; that's the way we keep the records of the Camp. My signature is on that book.

Q. What is the purpose of this book?

A. To keep our account of where the money goes and where it's expended. [457]

Q. Is it a monthly statement, or a daily statement, or weekly, or what?

A. It's kept monthly.

Q. On a monthly basis?

A. Yes sir; I simply sign it.

Mr. MOORE: I offer this book for identification.

CLERK: Do you want this marked?

Mr. MOORE: Yes.

(Marked "U. S. Exhibit No. 6 for Identification")

The COURT: Mr. Moore, you're offering this book, are you?

Mr. MOORE: No, no; I'm just offering it for identification, that's all, Your Honor. Mr. Ulrich stated he wanted to know what we referred to, and I don't see where it has any particular place in the evidence, but I guess if Mr. Ulrich wants to use anything there with reference to Mr. Mookini I have no objection.

Q. After Mookini was appointed, was there any change that you know of with reference to the place where vegetables were purchased?

(Testimony of James R. Mahaffy.)

A. Mookini was mess officer, and he had a truck, and he used to come to town to purchase where he thought it was better vegetables and, I would say he said, cheaper; however, he had the permission to go to town because we thought that that would be to the best interests of the Camp.

Q. Where did you get the funds to start this Mess?

A. From the Finance Officer at Shafter.

Q. Did you get any advance at all?

A. Yes sir.

Q. Is that set forth here in your council book, or do you know?

A. I don't know; it was properly accounted for —some $500.00, I believe. [458]

The COURT: When you refer to "finance officer" you mean the finance officer of the United States Army?

A. Yes sir.

Mr. MOORE: Showing you this United States Exhibit 6 for Identification, and referring particularly to these pages that succeed what appears to be a form as to how these are to be set out——

A. Yes sir.

Q. What do these items refer to, what are those items?

A. It says here "$475.00"—

Q. Without giving me the items, can you tell us whether that's a statement or account or for any particular period?

(Testimony of James R. Mahaffy.)

A. Yes sir, this for the month of March.

Q. With reference to receipts and disbursements?

A. Yes sir.

Q. And that's with reference to this particular position that you held?

A. Yes sir.

Q. $475.00, is that the amount of the advances?

A. Yes sir.

Mr. MOORE: All right. We'll offer this book in evidence.

Mr. ULRICH: No objection.

The COURT: It will be admitted.

(Marked "U. S. Exhibit L")

Mr. MOORE: That is, I am speaking now particularly of Mr. Mahaffy's statement here.

The COURT: How can this exhibit be identified?

Mr. MOORE: Exhibit "L". Now, referring to this exhibit here, these figures down here, $344.87, appearing at the bottom of the page, what is that? [459]

A. That's the balance carried forward; that means the amount we had over of what I am allowed to spend that month.

Q. In other words, what was left of the money that you received from the finance officer?

A. Yes sir.

Q. Besides this, did you have any goods on hand in the warehouse?

(Testimony of James R. Mahaffy.)

A. Yes sir, we had an invoice, we have another sheet—we did have a sheet showing an invoice of the amount in the storeroom; that's in addition to this $344.87.

Q. Did you ever meet this man Lee Chong—do you know Lee Chong?

A. No sir.

Q. You never met him at all?

A. Not that I know of; I may, but I don't recollect it.

Q. And you had no knowledge of where they were purchashing down town?

A. No sir.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. In other words, Major, the substance of your testimony seems to be, in the first place, that there was a time when it was decided to put Mr. Mookini in charge of the Mess; that was because you thought he could do better than had been done before, is that right?

A. Yes sir.

Q. In addition to that, an order was given to make purchases in town?

A. Yes. [460]

Q. Because you thought perhaps he might do better that way?

A. Yes.

(Testimony of James R. Mahaffy.)

Q. Aside from that, you kept—there was this council book which was kept, is that right?

A. The council book is the book the same as the company commander in the Army must keep; that is the proper way to keep account of Government funds.

Q. That is the company book?

A. Yes sir.

Q. And that's about all you've told us, I guess. You said you didn't know Mr. Lee Chong. Ever remember seeing him before?

A. I didn't recall him by that name; I remember seeing that gentleman before, but I didn't know him by that name.

Q. Do you recall a time when he was out there with Miles and Cunningham, and Mookini came in, and you and Miles and this gentleman were there?

A. No sir, I don't recall that.

Q. You don't recall that?

A. No sir.

Mr. ULRICH: All right; that's all.

Re-direct Examination.

By WILLSON C. MOORE, Esq.

Q. You didn't notice anything wrong with these vegetables while you were out there, that is, before this buying down town started?

A. No sir.

Q. Did you go through the kitchen, or not?

(Testimony of James R. Mahaffy.)

A. Yes, I went through the kitchen and mess room every day that I was there.

Mr. MOORE: That's all.

Mr. ULRICH: Just a moment. [461]

Re-cross Examination.

By BARRY S. ULRICH, Esq.

Q. There was nothing wrong, no suggestion of anything being wrong with the vegetables while you were out there, was there?

A. No sir.

Mr. ULRICH: What's counsel talking about—trying to throw something black on this man's administration?

Mr. MOORE: Not at all.

Mr. ULRICH: I guess it was a mere question. That's all.

(Recess—10:00 to 10:10 a. m.)

FRANK D. GIBSON

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Frank D. Gibson.

Q. And where are you now employed?

A. United States Customs.

(Testimony of Frank D. Gibson.)

Q. Were you ever connected with the Civilian Conservation Corps?

A. I was.

Q. Whereabouts?

A. At Schofield.

Q. In what capacity?

A. As the Camp quartermaster.

Q. And when were you first connected with that organization?

A. In the latter part of January, I think, last year.

Q. Was that at the inception of the Camp, when the Camp started?

A. Shortly before the Camp started, yes sir. [462]

Q. And when the Camp first started did you have anything to do with the purchasing of the foods for the Mess?

A. I did.

Q. Just what did you have to do in that regard?

A. All the purchases were made from the Army.

Q. By whom?

A. By myself.

Mr. ULRICH: Just amoment, if Your Honor please. I haven't objected to a considerable amount of testimony—I don't want to object now except in the interest of justice, I mean, of expediting matters, we ought to have some limit. I don't see what difference it makes what this man did before

(Testimony of Frank D. Gibson.)

the Camp started or about when the Camp started. We've already had the way in which purchases were made; perhaps counsel will indicate the relevancy of the testimony. I don't object to it particularly, except I'd like to carry forward the trial as speedily as possible without too much interruption about so much immateriality. I suggest the immateriality of this line of evidence.

The COURT: These questions seem to be preliminary.

Mr. MOORE: Yes, they are, Your Honor. I just want to show that he did the purchasing from the Army and continued right on through purchasing it from the Quartermaster, and the only things that he did not purchase were the fruits and vegetables and things of that kind, which were purchased down town.

Mr. ULRICH: I'll be glad to admit it; however, I'll withdraw the objection.

The COURT: Mr. Gibson, you said you are now employed by the United States Government?

A. Yes sir. [463]

Q. In what department?

A. United States Customs.

Mr. MOORE: Were you ever relieved as mess officer out there?

A. I was.

Q. And who took over those duties?

A. Mr. Mookini.

(Testimony of Frank D. Gibson.)

Q. After you were relieved and Mr. Mookini took over those duties, did you have anything to do with purchasing at the Quartermaster's whether it be food or anything else, at Schofield?

A. I did, yes sir.

Q. And what did you have to do with them?

A. I had charge of all purchasing in Schofield.

Q. In Schofield?

A. All purchasing in Schofield, yes sir.

Q. Where were the staple goods for the Mess purchased; I mean by that, canned goods and things of that kind, which would not include meat or vegetables?

A. From the Quartermaster.

Q. And you did that?

A. The order was given me and I presented it to the Quartermaster and received it.

Q. And did that state of affairs exist during this whole period that you were there?

A. It did.

Q. When did you leave the Camp of the Civilian Conservation Corps?

A. I believe it was in the latter part of September, the last of September, I think.

Q. And how did you happen to leave, Mr. Gibson? [464]

A. The position that I held as quartermaster was done away with and combined with Recreation Officer—so I was told.

(Testimony of Frank D. Gibson.)

Q. In other words, your position was abolished?

A. Exactly; at least, that's what I was told by Mr. Lloyd.

Q. Do you know a man by the name of Colman?

A. I do.

Q. Did he hold any office out there at this Camp?

A. He was a camp clerk, and later on carried the title of camp adjutant, I believe.

Q. Did you ever have a conversation with Mr. Mookini during the early part of September of last year, wherein the name of Mr. Colman came up?

A. Several times; we lived together, you might say; we stayed out there, and I saw him daily.

Q. Well, bringing it more specifically: Were you ever present at a conversation between yourself and Mr. Mookini where the question of an investigation by Mr. Colman was the topic of the conversation?

A. At one time, yes sir.

Q. When was that, Mr. Gibson?

A. It was—let's see; they had a banquet on a Saturday, I think it was; it was the day after Labor Day; Labor Day came on Monday, and this was on Tuesday morning.

Q. What was the nature of this banquet?

A. The banquet, yes sir; just a dinner.

Q. Do you know what a luau is?

A. Yes, that's what it was.

(Testimony of Frank D. Gibson.)

Q. And where did this conversation take place?

A. In the office out there, and also in the immediate vicinity. [465]

Q. Now, I would ask you to give us that conversation to the best of your recollection.

A. Well, there wasn't much to it; I had been on leave, or, rather, in town over the holidays, and came back late Monday night; and on Tuesday morning I happened to go down to the office or to the mess hall and then to the office, and Mr. Mookini seemed to be at the time rather wrought up at Mr. Colman, saying that he had—which was news to me—that Mr. Colman had started a sort of investigation by himself over the week-end, and that Mr. Mookini seemed to be quite worked up about it—at least, he was kind of mad about it.

Q. Did he say anything about doing anything to this man because of that?

Mr. ULRICH: Well, if Your Honor please, I think we're getting pretty far afield. I have no objection to any conversation in which Mr. Mookini may have said anything to indicate guilt, if that's what the idea is; but in this case there's nothing of that kind so far; apparently it's brought up by somebody carrying on an investigation; just what that means I'm not quite sure; but when it gets to the matter "did he threaten to do anything to him", I object, if Your Honor please; I think—in the first place, it's a leading question; of course the witness has the idea now; and I object to the

(Testimony of Frank D. Gibson.)

examination on the ground it isn't proving anything.

The COURT: The question is leading and suggestive, and the objection will be sustained on that ground. Mr. Gibson, you said that Mookini seemed to be "mad"; just what were the facts from which you concluded he was mad; what [466] did he do or say to cause you to conclude that he was mad?

A. Well, he said he was going to beat him up; he said that he would.

Mr. MOORE: During this conversation was there any telephone calls made?

A. Yes—not during the conversation, no; afterwards.

Q. Well, afterwards, who made the telephone calls?

A. Mr. Mookini and I were in the office, and Mr. Mookini did.

Q. And whom did he call, if you know?

A. He called up the vegetable man in town.

Q. What's his name?

A. Lee Chong, I think—Lee Chong.

Q. And what did Mookini say to Lee Chong in that conversation?

A. He said that there was a company clerk out here that was carrying on an investigation and that for him not to do anything or say anything until he, Mr. Mookini, had seen him; or words to

(Testimony of Frank D. Gibson.)

that effect, I don't quite remember; I didn't pay an awful lot of attention.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. Passing over the fact that you bought groceries in a certain way, I understand this other thing is merely this; that Mookini came to you one time and told you that the company clerk was carrying on some kind of an investigation and that he was going to beat him up; is that what you told the Judge?

A. Yes sir.

Q. And then you heard him call up Mr. Lee Chong in town and tell him that this clerk was carrying on an investigation and not to do or say anything until he had seen him, [467] or something of that kind?

A. Words to that effect, yes sir.

Q. That all happened on one day, did it?

A. Yes sir, in the morning.

Q. What the investigation was or the connection of Lee Chong to it or anything of that kind you didn't know and you didn't say anything about at the time?

A. Yes sir.

Q. And this was in September, did you say?

A. I believe so; it was the day after Labor Day.

(Testimony of Frank D. Gibson.)

Q. The day after Labor Day?

A. I think it was on a Tuesday.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

HARRY M. COLMAN

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Harry M. Colman.

Q. Were you ever connected with the Civilian Conservation Corps at Schofield Barracks?

A. Yes.

Q. When?

A. Between January and October, 1934.

Q. In what capacity?

A. Clerk and adjutant.

Q. Where did you get your meals? [468]

A. I got them for some time at the Camp mess; about the last three months I ate outside.

Q. Why did you eat outside the last three months for?

A. Because I didn't like the mess that they were serving there.

(Testimony of Harry M. Colman.)

Q. What was the matter with it?

A. I didn't like the way the meals were made up; I didn't like the food.

Mr. ULRICH: If Your Honor please, we've had some much evidence come in here that's totally irrelevant; what difference does it make whether this man liked the mess out there?

Mr. MOORE: He said it was no good.

Mr. ULRICH: I submit it's entirely irrelevant, incompetent, and immaterial. (argument).

The COURT: The Court doesn't see the relevancy, Mr. Moore, of whether this man liked the food or whether he didn't.

Mr. MOORE: Very well; I'll not proceed any further with that.

Q. In September, that's after this luau, did Mookini ever have a conversation with you with reference to making any investigation?

A. Yes, he did.

Q. Where did that take place?

A. It took place, I believe, in the office, at my desk. He came and said that he had spoken to Miles and to Gibson—I think he said, the doctor—and talked over with them the fact that I had made an investigation, he had been told that, and he said, rather than to fight it out with me, which he intended to do, he would rather talk to me "man to man"; and he asked me whether I had made an investigation, and I said I hadn't.

Mr. MOORE: That's all. [469]

(Testimony of Harry M. Colman.)

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. He asked you whether you had been investigating, and you said you had?

A. I said I hadn't.

Q. You had not?

A. I had not.

Mr. ULRICH: That's all.

Mr. MOORE: Call Captain Baldwin.

The COURT: Is this a witness who can be heard in a short time?

Mr. MOORE: I don't know; it may take some time, Your Honor.

The COURT: Well, we'll get started, anyway.

Mr. MOORE: Very well.

CAPTAIN HERBERT BALDWIN

being first duly sworn as a witness for the Plaintiff testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Herbert Baldwin.

Q. You are an officer of the United States Army?

A. Captain, of the Finance Department, United States Army.

(Testimony of Captain Herbert Baldwin.)

Q. Stationed where?

A. Fort Shafter, Territory of Hawaii.

Q. Have you any comection, in your capacity as finance officer—withdraw that question.

During the year 1934, in your capacity as finance officer, did you ever have any connection with the Civilian Conservation Camp?

A. I did, yes sir. [470]

Q. With that one located at Schofield Barracks?

A. Yes sir. I am the fiscal agent for the Civilian Conservation Corps, duly appointed by law.

Q. Do you know whence the Mess Fund for the Camp of the Civilian Conservation Corps at Schofield Barracks was derived?

A. Derived from appropriated moneys entrusted to my care from the Treasury Department through the Chief of Finance of the War Department.

Q. Did it have any connection with the Department of the Interior?

A. Yes sir; the funds are transferred after they are appropriated by Congress, they are transferred from the Department of the Interior to the War Department pursuant to executive order of the President.

Q. For this particular purpose?

A. For this particular purpose.

Q. Do you know Captain William E. Miles?

A. I do, yes sir.

Q. In 1934 did he have anything to do with the Civilian Conservation Corps?

(Testimony of Captain Herbert Baldwin.)

A. He was appointed Director of the Civilian Conservation Corps Camp at Schofield Barracks.

Q. Did you ever pay him any of these funds that you've just spoken of?

A. I did, yes sir.

Q. And when would you pay him these funds?

A. These funds were paid on an approved voucher certified to by Mr. Miles, authenticated by Mr. Lloyd, and approved by the Governor of the Territory of Hawaii. [471]

Q. And the amount of the money turned over was based on what?

A. It was based on the strength of the Camp, at 50 cents a day, which was the value fixed by the Secretary of the Interior as the ration value per man per day.

Q. For the——

A. Month.

Q. When is this money paid, that is, before, during, or after the month it is computed?

A. It is paid after the month it is computed.

Q. At the end of the month of June of last year did you pay any of these funds to William E. Miles?

A. I did, yes sir.

Q. And that was for what—to cover what month?

A. May, 1934.

Q. And how much money did you pay him?

(Testimony of Captain Herbert Baldwin.)

A. (after consulting memorandum): On my voucher Number 232, dated June 5th, 1934, which was certified to by William E. Miles, approved by Mr. Lloyd, and signed by Raymond C. Brown, Acting Governor, for $2,938.50, which is covered by check No. 55,384 on the Treasury of the United States, dated June 5th, 1934, payable to Camp Director C. C. C. Camp, Schofield Barracks, T. H., which said check has been presented to the Treasury Department, duly endorsed and paid.

Q. Did you pay any funds during the month of October, as you've just related you did in the month of June?

A. (after consulting memorandum): My voucher No. 257, dated October 4th, 1934, certified to by William E. Miles, Camp Director, approved by J. W. Lloyd, approved by J. B. Poindexter, Governor of the Territory of Hawaii, for $2,408.56, which was paid by check No. 493184, dated October 4th, 1934, on the Bishop National Bank of Hawaii, [472] at Honolulu, United States depository, payable to Camp Director, C. C. C. Camp, Schofield Barracks, Territory of Hawaii, which said check has been presented to the United States depository and paid.

Q. Now, these funds that you pay out can be used by the camp director for what?

A. The purchase solely of food.

Q. Captain Baldwin, how long have you been in the United States Army?

A. Going on 18 years.

(Testimony of Captain Herbert Baldwin.)

Q. How long have you been in the finance department of the United States Army?

A. Since July 1st, 1920.

Q. Are you familiar with the regulations which govern the purchase of food for the Camps of the Civilian Conservation Corps?

A. I am, yes sir.

Q. And where, under and by virtue of those regulations should the food be purchased?

A. From the Quartermaster Corps, the Post Exchange, or its authorized instrumentalities. By "Quartermaster Corps" I mean what is commonly known as the Commissary.

Q. Are there any instances, Captain Baldwin, where under the regulations the purchases should or could be made elsewhere?

A. None that I know of, except when the necessary supply is not on hand, in which case they must have a certificate from the Quartermaster certifying that that article is not for sale by the Quartermaster Corps. [473]

Q. Now, Captain Baldwin, in the event that there are funds such as these that you were testifying to that have not been expended, what becomes of those?

A. They are turned back to the finance——

Mr. ULRICH: Just a moment. I haven't objected before—to the observance of rules and regulations of departments, that this man talked of

(Testimony of Captain Herbert Baldwin.)

from 18 years experience, I don't know where, it couldn't have been the Civilian Conservation Corps because it hasn't been going on that long—because I didn't want to unduly curtail the examination; but, if Your Honor please, I do submit that this particular line of testimony is irrelevant and immaterial and has no bearing on the issues of this case; it is the first I have had an intimation to the effect that aside from proving some sort of offense against these defendants they are now branching out, claiming some kind of offense committed by Mookini and everybody I suppose because they went outside the Camp and purchased goods in Honolulu. If that's an offense, I don't know; it has no place in this case because there's no charge based on anything such as that. The propriety of going outside the Camp and purchasing these goods away from the Quartermaster is certainly not an issue before this Court in this case. If it be true that it is an inflexible rule of the department, or whatever he's talking about from this 18 years experience, that they should only purchase from the Quartermaster Corps, we're not concerned about that or a violation of that rule here, and it has no bearing on the issues of the case at all; and I submit it's incompetent, irrelevant, and immaterial. [474]

Mr. MOORE: I think, Your Honor, that the question before the Court at this time is what be-

(Testimony of Captain Herbert Baldwin.)

comes of the funds that are unexpended which have been turned over to the camp director of the Civilian Conservation Corps.

Mr. ULRICH: That is the question, if Your Honor please; I thought it was another question on the same line. Then my position should be made clear in a motion to strike the testimony of this witness as to the rule against purchases outside or away from the Quartermaster Corps, as immaterial and irrelevant to any of the issues of this case. I make such a motion.

Mr. MOORE: We resist the motion, Your Honor.

The COURT: What claim do you make for the testimony?

Mr. MOORE: The claim for the testimony is this, Your Honor: It has been testified—I do not wish to argue the case in the presence of the jury or the proposition. If the Court wants to excuse the jury—it's practically time to quit now, anyway—and I can make my position clear, because I do not think that argument of the facts should go before the jury until this case is finally concluded.

The COURT: The Court has no hesitancy in saying that a purchase of these goods from someone not authorized is not charged in this indictment and will not be permitted to be considered by this jury as a crime.

Mr. MOORE: Well, may it please the Court, I would like to have an opportunity, before Your

(Testimony of Captain Herbert Baldwin.)

Honor makes the ruling finally, to set forth my position and my reasons for producing such evidence, and I believe that if I am given an opportunity to do that, that Your Honor can see the relevancy and the materiality in this case. [475]

Mr. ULRICH: That need not interfere with the progress of the hearing at this time and hold this witness and make the jury be dismissed and come back, and all that sort of thing. If counsel has anything he wants to say, let him say it when the jury is gone, but let's finish with this witness; there's not even going to be a cross-examination, and he'll be through and we can go ahead; then if he wants the Court to hear an argument on the motion to strike the evidence, and the Court will rule for or against the motion, we can argue it at that time.

Mr. MOORE: Do you recall the question I asked, of what became of those funds when they were unexpended?

A. They are returned to me as fiscal agent and I place them in a special deposit account until such time it's been ascertained that no further outstanding liability exists against this fund, whereupon these funds are deposited to the credit of the Treasury of the United States.

Q. In other words, these funds in the hands of the director always are Federal funds?

A. They are, yes sir; they do not lose their identity.

(Testimony of Captain Herbert Baldwin.)

Mr. MOORE: You may cross-examine.

Mr. ULRICH: No cross-examination; that's all.

The COURT: Gentlemen of the jury, at this time we'll adjourn until nine o'clock tomorrow morning. Remember carefully the admonition heretofore given you about discussing this case or permitting anybody to talk to you about it.

Mr. MOORE: If Your Honor will excuse the jury, I might state my position, if Your Honor wants to take it up at this time; or we can take it up in chambers at ten minutes to nine, before the case convenes. [476]

The COURT: Whatever time is most convenient to counsel.

Mr. ULRICH: It would be convenient to me right now, if Your Honor please.

The COURT: The jury will be excused until tomorrow morning at nine o'clock.

(Jury dismissed—11:45 a. m.)

Mr. MOORE: My position is this, may it please the Court, in that connection:

The testimony here shows that Robert Mookini not only was Mess Officer out here, but he was a reserve army officer, and the regulations with reference to purchasing goods at the Commissary are things that he, holding such position, should know; and we contend that it bears upon the reasons for going elsewhere from the Commissary. This is the thing; out there at the Commissary it's a

(Testimony of Captain Herbert Baldwin.)

pretty hard thing to pad any bills—it's next to impossible; therefore the purpose of the changes, which are again what he as a reserve officer should know; and we contend for the value of that testimony as along those particular lines. We're not contending, may it please the Court, that the mere fact that he went out and bought goods elsewhere was a crime in itself, because it isn't a crime; it's a violation of the regulations, but it is not a crime; and that was the purpose of calling for that evidence.

Mr. ULRICH: I still submit that it's totally irrelevant and immaterial. The evidence in the case of Major Mahaffy and Mr. Miles and everybody else is to the effect that it was decided by the authorities out there—not by Mookini, but by his superiors,—that the purchases should [477] be made in town. Now, whether or not Mr. Mookini acquiesced in the wishes of his superiors and did that thing, or did it of his own accord, has nothing to do with the case as to any of the facts which have to do with the case. It certainly doesn't show such guilty conduct as to color the testimony about his conduct or suggest the probability of guilt with respect to any other things. As counsel says, at most it would be a violation of regulations, with full knowledge of everybody concerned. I submit it's burdening the jury with a lot of foreign thoughts; we have too many already which really

(Testimony of Captain Herbert Baldwin.)

don't have a bearing on the case at all. I submit the motion to strike should be granted.

The COURT: Just what do you direct your motion to? Certainly not to all of his testimony?

Mr. ULRICH: I direct it to the evidence of the witness to the effect that the rules of the department—I don't even know just what he was talking about—what was it?

Mr. MOORE. The regulations are, that——

Mr. ULRICH: Regulations of what?

Mr. MOORE: The Army regulations which are applicable to the Civilian Conservations Corps——

Mr. ULRICH: All right, then, that's the motion, to the fact that Army regulations are to the effect that purchases may not be made outside the Government sources, that is, the Quartermaster Corps, and it was along that line.

The COURT: The defendant's motion to strike is allowed.

(Adjourned—11:50 a. m.) [478]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Friday, May 17th 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel;

(Testimony of Charles I. Deville.)

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: We are ready for the defendants, Your Honor.

The COURT: Do you stipulate that the jury are present, Mr. Ulrich?

Mr. ULRICH: Yes.

The COURT: Let the stipulation be entered.

CHARLES I. DEVILLE

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq. [479]

Q. What is your name, please?

A. Charles I. Deville.

Q. Your business?

A. Agent, Secret Service Division, Treasury Department.

Q. United States Government?

A. Yes sir.

Q. And in such capacity did you conduct an investigation in this case?

A. I did.

Q. Do you know a Mr. Roque?

A. I do.

(Testimony of Charles I. Deville.)

Q. And where is he employed?

A. He is employed as assistant manager of the Lee Chong Company at Aala Market.

Q. Is that the same Company that we've been talking about throughout this trial?

A. It is.

Mr. ULRICH: This is this witness' understanding of his relationship?

Mr. MOORE: Yes.

Mr. ULRICH: He thinks he's assistant manager, is that it?

Mr. MOORE: Upon what do you base that statement that he is assistant manager of that Company?

A. He receipted some C. C. C. vouchers as "assistant manager" for the Lee Chong Company.

Q. And that is the basis for your statement?

A. Yes; he may not be now, sir.

Q. Showing you United States Exhibit "B"; where did you first see that, Mr. Deville?

A. This particular voucher I received from Mr. Lloyd of the E. C. W., I feel quite sure that I did there. [480]

Q. And United States Exhibit "D"?

A. I received that from Mr. Roque at the Lee Chong Company.

Q. Did you receive any others of these vouchers that have been introduced in evidence, from Mr. Roque? Will you look those over. That is United

(Testimony of Charles I. Deville.)

States Exhibit "D" you received from Mr. Roque?

A. Yes, that's correct.

(Mr. Ulrich examines documents at the witness-stand. Witness looks over various documents).

A. I believe I received the original September 1st voucher, Exhibit "G", from Mr. Roque.

Q. And then you received other vouchers, did you not, that are not in evidence?

A. That's correct.

Q. Now Mr. Deville, during your investigation did you ever have any conversations with Mr. Lee Chong?

A. I did.

Q. When did you first see him with reference to this indictment?

A. On October 25th, 1934.

Q. Whereabouts?

A. On King Street, near Alakea.

Q. Did you have any conversation with him at that time?

A. Yes; I told him I was a Federal officer and I wanted to interview him, and he told me to see him later.

Q. Did you see him later?

A. I did.

Q. When did you see him?

A. With specific reference to these vouchers, I saw him the following day at his office in Aala Market.

(Testimony of Charles I. Deville.)

Q. Who was present? [481]

A. Mr. Tom Hoon, Government interpreter for the Immigration Service, Mr. Roque, Mr. Lee Chong, and myself.

Q. Calling your attention to United States Exhibit "D" that you've said that you received from Mr. Roque, did you have any conversation with reference to that particular voucher; that is, the voucher I'm speaking of is the one that is the substitute for Exhibits "B" and "C", Exhibits "B" and "C" being the ones that have the paper plates, cups, napkins, strawberries, crab, opelu, nuts, candies, and 400 pounds of pumpkin; did you discuss that?

A. Yes, I did. However, I didn't show them the voucher nor the photostat of it on this date.

Q. What was your discussion at that time?

A. With reference to this United States Exhibit "D", Mr. Lee Chong stated that the oysters and the strawberries listed on the invoice——

Mr. ULRICH: Just a moment, if Your Honor please. Why not have this come in in a regular way. I am doubtful—I don't believe the law makes it proper for the witnesses other than the defendants themselves to testify to statements and conversation made by the defendants unless the Court can see from the proposed evidence, after indicated to the Court, that it's tantamount to a confession of guilt. Of course, nothing has been said

(Testimony of Charles I. Deville.)

by Mr. Lee Chong, as I understand the facts, that was tantamount to a confession of guilt on the part of this witness. I don't know what the man is going to testify to now, but unless there is an offense to testify to, a confession of guilt, I don't believe that a conversation in which the defendant's testimony is given can properly come in in this way; then the defendant can properly be called, if he is called to testify [482] and will tell what the facts are himself. I don't believe that you can involuntarily and indirectly get his statements before the Court in this case unless it comes in, as I say, under an exception to the rule, which would be as a confession of guilt, and in that event it would have to be shown to the Court's satisfaction that it was such a confession.

Mr. MOORE: I submit, may it please the Court, that the statements to which this witness is about to testify are in the nature of confessions, and further than that, admissions against interest.

Mr. ULRICH: (Argument).

Mr. MOORE: I have no objection, may it please the Court, to making an offer of proof in the absence of the jury; I am perfectly willing to do that; and if Mr. Ulrich feels he would like to know exactly what I want to prove by this witness, I'll ask that the Court excuse the jury temporarily and I'll make such an offer.

The COURT: However, before that is done, the Court now recalls that at the time the jury were

(Testimony of Charles I. Deville.)

excused yesterday there was a motion to strike a portion of the evidence of the last witness, Captain Baldwin, under consideration. Gentlemen of the jury, in ruling upon that motion the Court ruled that the testimony of Captain Baldwin relative to the regulations as to where foodstuffs should be bought should be stricken from the record, which means that you are not to consider that testimony. The jury will now be excused temporarily until this matter is determined.

(Jury retire from courtroom—9:17 a. m.)

Mr. MOORE: We offer to prove by this witness, may it please [483] the Court, that on October 26th of last year he was down at Lee Chong's store, and there was questioning Lee Chong about various matters concerning this investigation, and particularly with reference to United States Exhibit "D", which is the voucher of May 12th; that he asked Mr. Lee Chong which of the items were "phoney" or weren't properly listed upon the voucher, and that thereupon Mr. Lee Chong called Mr. Roque and stated, "Well, Roque knows what they are and he'll point them out"; and that there in the presence of all these persons Mr. Roque called off these various items which were not goods that were delivered but were listed upon the voucher, they being: 500 oysters, 4 cases apples, 400 pounds pumpkin, 400 pounds spinach, 400 pounds squash, 40 pounds lima beans; and then

(Testimony of Charles I. Deville.)

that thereafter he stated that the item of oysters, $17.50, and that the item of strawberries, $6.25, covered the item of "flowers" in the sum of $23.75 that were delivered—there was some question about pumpkin—and that the balance covered the limu and opae, and nuts and candies, and so forth. We want to show that he also discussed with Mr. Lee Chong the items upon United States Exhibit "G", in the same manner, and that Mr. Roque, at Mr. Lee Chong's request, called off the items that were not delivered but were listed upon the voucher, setting forth that there was 25 pounds yams, 6 cases honey dew melon, 300 pounds pumpkin, 10 pounds mushrooms, 15 gallons mayonnaise, and that he said those items covered the items listed in United States Exhibit "J", which are keawe wood, chicken wire, empty bags, rent for chairs, paper plates, napkins, cups, bowls and spoons, cigars and cigarettes, Hawaiian pudding, and flower leis; that he stated that the [484] corrected bill was made up at the request of Mr. William E. Miles; that United States Exhibit "H", which is a correction of United States Exhibit "G", was made up at the request of Mr. Miles, and that United States Exhibit "J" was billed separately at the request of Mr. Miles, which is in the sum of $72.50; that he interviewed or attempted to interview Mr. Mookini at Schofield Barracks on October 17th, and that Mr. Mookini refused to

(Testimony of Charles I. Deville.)

give him any information whatsoever, stating that Mr. James W. Lloyd, who is the head of the C. C. C., had given him instructions not to say anything, and that thereupon Mr. Deville called up Mr. Lloyd and asked him about it, and the telephone was passed over to Mr. Mookini, and after a conversation with Mr. Lloyd Mr. Mookini stated that Mr. Lloyd had stated it was perfectly all right for him to tell Mr. Deville all about this thing; and then after that, that Mr. Mookini said still he wouldn't talk about it, he woudn't say anything until after he had seen counsel.

Mr. ULRICH: We have two very different and distinct offers there from the Government.

Mr. MOORE: I thought I'd make them at the same time.

Mr. ULRICH: Insofar as the first thing is concerned, if the Court please, I think that the way the offer has been made indicates the vice of allowing testimony to come in in that way. Counsel has said that he offers to prove that Mr. Lee Chong in the first place said—he didn't say it himself, at all, so far as that's concerned, but called his bookkeeper to tell Mr. Deville here what goods hadn't been delivered on some bill; then the latter part of the testimony indicates that that also was coupled with a [485] statement that he never had delivered those goods, that they were on the changed bill and that they represented other goods which Mr. Miles

(Testimony of Charles I. Deville.)

—I believe this witness is going to say—alone had directed the change. Now, there might or might not be an offense involved in things of that kind. Mr. Lee Chong, of course, has no connection with the United States Government at all; he has nothing to do with the way they charge their bills or handle their account after they are turned in there; and if one of the officers of the Camp having in charge both Government funds and other funds comes to him and orders him to present his bill in a certain way, that would certainly not be evidence of any intent on Mr. Lee Chong's part to commit fraudulent acts so long as he didn't seek to gain any advantage or defraud the Government in any way; and there isn't the slightest suggestion, so far as this offer is concerned, of intent to charge more money than should be, or anything else, except making his listing in ways unadvantageous to Mr. Lee Chong desired by them to have the bills presented. So that, you don't show any crime, you don't show any confession of guilt, by showing that Mr. Lee Chong acquiesced in the request on the part of Miles or Cunningham—and I believe Mr. Miles is the only one suggested here—to list certain edibles as non-edibles, presumptively for the reason of permitting him to charge against one account or another, there being certainly nothing in the nature of a presumption that he was going to commit a crime or was to improperly charge it

(Testimony of Charles I. Deville.)

against the Government or otherwise which would support a contention that Mr. Lee Chong was a party to that crime. [486] I submit, if Your Honor please, that it is not a confession of guilt, and that the defendant should be entitled to give his own story here on the witness stand unhampered or unaffected by any version of the story as heretofore given. Perhaps, after he has given it, if his story is not such as Mr. Deville has formerly had told him, then we come into a very different field of evidence, namely, the showing of prior contradictory statements or material to impeach his testimony; but as a matter of independently showing at this time with a view to showing guilt or innocence of the defendants, I submit that the offer does not amount to a confession; that it can't come in under the criminal laws as an admission against interest, and that it can only properly be resorted to in the event that the defendant's own testimony might lay him open to impeachment, to the showing of prior contradictory statements.

Mr. MOORE: (Arugment) * * * Now, in showing the intent of this person to be a joint party to the presenting of false vouchers, it's certainly of the utmost importance to show that he knew when these bills went out that they were false, fictitious, and fraudulent, and they did not purport to be honest in their items. We're further entitled to show the man's demeanor; and we submit, may

(Testimony of Charles I. Deville.)

it please the Court, that this evidence is pertinent, relevant, proper, and admissible.

Mr. ULRICH: (Argument).

The COURT: The Court understands from your argument, Mr. Ulrich, that when you refer to "first part" and "second part", by the "first part" you mean the offer as to Lee Chong?

Mr. ULRICH: Yes, Your Honor. [487]

The COURT: And by the "second part", the offer as to Mookini?

Mr. ULRICH: Yes, Your Honor.

The COURT: Now, this is true, that this is not a confession of guilt as we often have presented before courts in cases of this character, where a defendant has made a detailed confession, perhaps signed, perhaps simply oral. But the Court holds that it is the law that facts admitted, of a kind that are material to the issues, may be shown by way of admissions; and it's far more fair for the Government, if it intends to present such matters, to present them in its case in chief and thereby give the defendants a proper opportunity to meet them, than it would be to permit the defendants to make statements and then come in by way of rebuttal to contradict them. There is much force, however, in the statement relative to what has been offered as to Mookini; a defendant cannot be compelled to testify against himself, and if a defendant does not elect to take the stand it

(Testimony of Charles I. Deville.)

is a matter that may not even be commented upon in argument before a jury. So it appears that the fact that when the defendant was asked he refused to talk is of itself a matter that is in no way material or proper. If, however, the defendant Mookini did make any statements bearing upon the facts of this case, to this witness, those statements and the circumstances under which they were made may be shown. At this time I want to call attention to a little matter of the use of a word again; in the testimony yesterday and again today the term "corrected bill" has been used, where I believe it should be changed to "changed", as Mr. Ulrich did, or "modified". "Corrected" would imply that it was erroneous [488] and that afterwards the errors were stricken out and correct statements were submitted. That is clearly not the intent or thought, but that certain items were modified. So I would suggest, if counsel agree with me, that in the future in referring to this matter it be referred to as "modified" or "changed" rather than "corrected".

Mr. MOORE: Very well, Your Honor.

The COURT: You may call the jury.

Mr. ULRICH: May I just take the ruling and make an exception at this time. I understand that the Government's offer of proof with respect to Mr. Lee Chong is granted; to which we except.

The COURT: The exception may be noted.

(Testimony of Charles I. Deville.)

Mr. ULRICH: And that the offer to prove with respect to the statement, or refusal to make a statement, of Mr. Mookini is denied.

The COURT: That is correct.

(Jurors return to courtroom—9:38 a. m.)

Mr. MOORE: Please read the last answer, Mr. Reporter.

(Reporter reads uncompleted answer, page 252, as follows: "With reference to this United States Exhibit 'D', Mr. Lee Chong stated that the oysters and the strawberries listed on the invoice——")

A. (continuing): had not been sent to Schofield Barracks, but, instead, flowers were sent. He stated that this camouflage was at the request of Mr. Cunningham and Mr. Mookini on or about May 10th or 11th; that Mr. Cunningham told him that, according to Army regulations, various articles that were not eatables could not be charged to the Mess Fund. [489]

Q. Were there any other articles on that particular exhibit pointed out as not having been delivered?

A. Well, not on October 26th; this was in a later conversation with Mr. Lee Chong.

Q. And when did that later conversation take place?

A. I would say about two or three days later, at which time I brought in a photostatic copy of the vouchers.

(Testimony of Charles ~~I.~~ Deville.)

Q. Of which vouchers?

A. Of the May 12th and September 1st vouchers.

Q. I'll show you the May 12th vouchers that we have here; which one of these vouchers was it, Mr. Deville, a photostat of which?

A. A photostat of this one (indicating).

Q. That's a photostat of United States Exhibit "D"?

A. That's correct.

Q. And who was present at the time, Mr. Deville, at Mr. Lee Chong's?

A. Mr. Roque, Mr. Lee Chong, myself, and I'm not certain whether Mr. Tom Hoon went with me on this occasion or not; I believe that he did.

Q. What other articles were pointed out to you on that bill as not having been delivered?

Mr. ULRICH: Which exhibit are you referring to?

Mr. MOORE: Exhibit "D".

Mr. ULRICH: Which is the changed bill?

Mr. MOORE: Yes.

A. I asked Mr. Lee Chong which of the items on that particular invoice were not delivered, and he said, "Roque can tell you better, he's the one that filled these up"; and he called Roque in and he told Roque to point out to me which [490] articles were not delivered, and Mr. Roque pointed out the items.

Q. As he pointed out these items did you do anything in particular?

(Testimony of Charles I. Deville.)

A. Yes, I made a check mark on the photostat; he pointed out the item of 500 oysters, he pointed out the item of 400 pounds pumpkin; and when he done that Mr. Lee Chong said "Now Roche, you know that that was delivered", and they had some conversation back and forth, upon the conclusion of which Mr. Roque said, "Well, I'm probably mistaken about the pumpkin". He picked out the item of 400 pounds of spinach, he picked out the item of 400 pounds of squash, the item of 400 pounds of lima beans, which were not questioned by Mr. Lee Chong.

Q. Was there anything said about what these items covered, excluding the pumpkin?

A. Yes sir.

Q. What was said in that regard?

A. It was said again at this time that the oysters covered the flowers, and that the other items covered certain items which had been eliminated from the original invoice; by that I mean the first invoice that was delivered to the Camp.

Q. Did you have the first invoice with you at that time?

A. I had a photostat of it.

Q. And that invoice that you speak of—showing you United States Exhibit "C"—is that it?

A. I believe it was a photostat of the one with the lines on, Mr. Moore.

(Testimony of Charles I. Deville.)

Q. That's United States Exhibit "B"?

A. That's correct. [491]

Q. And what items on there do you refer to as being covered by these other things; now we're not talking about the flowers; the other things you were talking about?

A. The items that the lines are drawn through.

Q. Will you name those off, please?

A. 200 paper plates, 1000 napkins, 25 baskets strawberries, 12 pounds of crab——

Mr. ULRICH: I understand the witness is saying these are the items Mr. Lee Chong told you were delivered but were listed by these other items you've already given?

A. Mr. Roque; that's correct.

Mr. ULRICH: He's giving the items that were delivered—paper plates and such things; isn't that right?

A. That's correct. 200 paper plates, 1000 napkins. With reference to this item of strawberries, this is rather confusing, because although the strawberries had been entered on the first voucher, Mr. Lee Chong had previously stated that they were not delivered. However, they were eliminated from that first voucher just the same. 12 pounds of crabs, 3 rolls of limu, opae, dried opelu, 50 pounds mixed nuts, 65 pounds candy, one box after-dinner-mints. He stated that this particular voucher was changed at the request of Mr. Mookini

(Testimony of Charles I. Deville.)

and Mr. Cunningham on or about Monday the 14th of May; that they came to his office with the request that he change that, although they didn't specify how, but that he changed it into items of foodstuffs because these items could not properly be charged to the Mess.

Mr. MOORE: Did you on these occasions have any conversation about the various vouchers of September 1st? [492]

A. I did.

Q. Here are the vouchers of September 1st; will you pick out the vouchers that you had a photostat of that you talked to him about?

A. Yes; United States Exhibit "G", Exhibit "H", and Exhibit "J".

Q. Exhibit "H"——

A. "G", "H", and "J".

Q. All right; take one at a time; start with "G". Now, with reference to Exhibit "G"?

A. With reference to Exhibit "G", Mr. Roque stated, in Mr. Lee Chong's presence and at Mr. Lee Chong's order, that of the 50 pounds of California yams billed 25 pounds were delivered; that 6 cases honey-dew melons were not delivered; 300 pounds of pumpkin were not delivered; 10 pounds dried mushrooms were not delivered——

Mr. ULRICH: Just a moment. I think this is very misleading, continually stating that these "were not delivered", These are the items, the

(Testimony of Charles I. Deville.)

evidence is, that were placed there in the place of certain goods that were delivered; of course these weren't delivered; but that gives the impression to the jury that these were charged for and paid for; as a matter of fact, these other things were delivered and furnished the consideration for the payment that was received. If you'll have him testify that these were items that were put there in place of——

Mr. MOORE: I am trying first to bring out the articles in this particular voucher that were not delivered, and then I'll later show the other two vouchers, which are "J" and "H", how it was split up. [493]

Mr. ULRICH: To show what was delivered?

Mr. MOORE: Yes.

Mr. ULRICH: All right.

Mr. MOORE: Now, how was this voucher charged, if you know?

A. Mr. Lee Chong stated that this voucher was made out and rendered at the request of Mr. Cunningham and Mr. Mookini prior to September 1st, that it was their instructions, and that they had stated to him it was Mr. Miles' orders, and that the United States Exhibit "G" was so rendered and was signed for by Mr. Cunningham; and that on or about October 6th Mr. Miles brought in that particular invoice or a copy of it and asked that the items that were not delivered but were put on the original invoice as something else be stricken

(Testimony of Charles I. Deville.)

from the list, that a true bill be rendered him and that another separate bill be rendered for the kaewe wool, chicken wire, paper plates, and so on.

Q. Is that separate bill there?

A. It is.

Q. And that is what exhibit?

A. Exhibit "J".

Q. Now, that kaewe wood, chicken wire, empty bags, rent for chairs, paper plates, naukins, cups, bowls and spoons, cigars and cigarettes, Hawaiian pudding, flower leis, make a total of $72.50?

A. That's correct.

Q. And was a new bill, or a changed bill, with the deletion of the articles listed upon United States Exhibit "G", made out?

A. Yes, a new bill was made out.

Q. And what exhibit is that, Mr. Deville?

A. Well, the items that were actually delivered are represented on United States Exhibit "H".

[494]

Mr. ULRICH: One voucher exhibits items that were actually delivered and listed on one sheet, and the others had been incorrectly listed on another one?

A. Beg pardon; items of one of them that were actually delivered at that time are listed on United States Exhibit "H", and the other ones are on the other one.

Mr. MOORE: That is, the luau affair is on Exhibit "J"?

A. That's correct.

(Testimony of Charles I. Deville.)

Q. The amount of the changed bill, Exhibit "H", is $454.10, and of Exhibit "J", of which you spoke, is $72.50; is that correct, Mr. Deville?

A. That's correct.

Q. Which makes up the total of $526.60 as listed to be the total on United States Exhibit "G"?

A. Yes.

Mr. MOORE: You may cross-examine.

(Recess—9:54 to 10:02 a. m.)

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Deville, you recall, do you not, coming to see me about Mr. Lee Chong showing you his book and talking this matter over with you?

A. I do.

Q. And explaining to me that you were investigating this matter and that you wanted to talk to Mr. Lee Chong and that he had referred you to me, or something of that kind?

A. Well yes, there was something of that kind; he wasn't in town at the time.

Q. I believe he had gone out of town, and someone had [495] suggested that he would consult me when he came back and he wanted me to take up the matter with him whether or not he would make a disclosure to you of what he had?

A. That's correct.

(Testimony of Charles I. Deville.)

Q. And you recall, do you not, that at a later time I advised you that I would instruct Mr. Lee Chong to show you everything that he had?

A. That's correct.

Q. And after that you had these conversations with him, did you?

A. I did.

Q. As I understand your testimony, it's simply this, is it not, Mr. Deville: That Mr. Lee Chong —or, rather, perhaps his bookkeeper more than he —advised you of certain changes that had been made in the bills as originally presented?

A. In these bills, yes sir.

Q. And he told you—he or the bookkeeper told you that with reference to the May 12th bill, represented in the first instance by United States Exhibit "B", that that bill had been changed to what we have here as United States Exhibit "D", and that the items ruled out on Exhibit "B" had been changed to other items as appearing on Exhibit "D", and that Exhibit "B" had represented the merchandise on the original delivery, excepting that the item of "oysters" had been "flowers"; is that substantially correct?

Mr. MOORE: No; I think you're wrong in the testimony there, Mr. Ulrich. That item of oysters and strawberries covered the flowers. [496]

Mr. ULRICH: The items of oysters and strawberries covered the flowers?

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI AND LEE SAU CHONG,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 16, 1937.

CERTIORARI GRANTED OCTOBER 18, 1937.

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VOL. II

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(Testimony of Charles I. Deville.)

A. Well, that's only a portion of what he said.

Q. I don't mean that's everything he said, but that that's the substance of what happened in connection with the alteration of this bill as he told it to you?

A. I'd like to supplement that by saying that he was first shown the changed voucher of May 12th, and first stated that the pumpkin was not delivered.

Q. I thought you said that what happened in that connection was that the bookkeeper thought the pumpkin might have been one of those that hadn't been delivered, and that Lee Chong corrected him and said he thought it had been delivered; didn't you say that?

A. That's correct. When these items were pointed out to me Mr. Lee Chong and Mr. Roque had some conversation as to whether or not the pumpkin was delivered;——

Q. You mean, as to whether or not the pumpkin was one of the items that had been used in the place of some of the other items that were listed?

A. No sir; as to whether the pumpkin had been delivered or not; Mr. Roque first stated that it had not; Mr. Lee Chong corrected him, and then later agreed he might be mistaken and that the pumpkin had been delivered after all on the original invoice which is United States Exhibit "B".

Q. So that the net result of the conferences over there was that he was under the impression that

(Testimony of Charles I. Deville.)

the pumpkin was delivered on the original invoice, although there had been some thought in his bookkeeper's mind that it had not [497] been delivered, or vice versa?

A. That's correct.

Q. The bills, of course, are for the same amount?

A. That's correct?

Q. I don't understand that you contend that Mr. Lee Chong told you that he tried to charge the Government any more money than represented goods that had been delivered to them?

A. No; Mr. Lee Chong contended——

A. That he delivered dollar for dollar merchandise to the Camp?

A. That's correct; he contended he had delivered all of the items on all of the bills he had, with the exception of the May 12th and September 1st, which he explained as I related before.

Q. The same is true, is it not, of the September voucher, that is, the September 1st voucher, being Government's Exhibit "G" in a total amount of $526.60, and the two other vouchers, being Exhibits "H" and "J", in the total amount, so far as the two vouchers are concerned, of the same figure of $526.60, the one being for $454.10 and the other for $72.50; the same is true, is it not, Mr. Deville, in the sense that Mr. Lee Chong told you that he had delivered $526.60 worth of merchandise as represented by the two latter vouchers, being "J" and "H", and not the exact merchandise as represented

(Testimony of Charles I. Deville.)

by the first voucher, being Exhibit "G"; is that not right?

A. Would you mind reading the question over?

Q. It is true, is it not, that's what Mr. Lee Chong told you with reference to these three vouchers you have before you? [498]

Mr. MOORE: That "J", "G", and "H", that Lee Chong told you that the goods in a total amount of $526.60, represented by "G", $72.50 on "J", and $454.10 on "H", had been delivered to the Camp.

A. Yes, that the articles listed on Exhibits "J" and "H" had been delivered to the Camp.

Mr. ULRICH: And that Exhibit "G" was a statement that had been made and later changed to "J" and "H" at Mr. Miles' request, as I understand it, which had originally had in the place of the non-edible items on Exhibit "J" certain edibles that appear on Exhibit "G"; that's true, is it not?

A. Yes, that's correct.

Q. In other words, Mr. Lee Chong told you in substance that he had originally listed certain non-edibles as edibles at the request of Cunningham—and did you say Mr. Cunningham and Mr. Mookini, was that your testimony?

A. That's correct; that's what he told me.

Q. Now, I believe you want to be fair about this, Mr. Deville, and you recall all that testimony so far as referring to Mr. Cunningham and or Mr. Mookini; to be perfectly frank with you, it's my contention, my understanding, that he didn't refer

(Testimony of Charles I. Deville.)

to Mr. Mookini in that regard; he told you about a time that Mr. Mookini had come in there—I am just trying to refresh your recollection—after Mr. Cunningham had had certain changes made. Frankly, how do you recall that well? You had numerous conversations with Mr. Lee Chong—and if you're referring to the conversation of the morning of October 26th, at which Mr. Tom Hoon was present and you weren't, Mr. Lee Chong said that Mr. Mookini and [499] Mr. Cunningham came in the office and it was at their request that the changes were made, and he quoted a part of a conversation that Mr. Cunningham is supposed to have told him; what was that?

A. That Mr. Cunningham said that some articles listed on the original May 12th invoice could not be charged to the Mess Fund, and that it would have to be changed into edibles or articles of subsistence.

Q. And that was what Mr. Cunningham said. What I'm trying to get is: From what Mr. Lee Chong said, are you now telling the jury that he said that Mr. Mookini had directed that those changes be made—not Mr. Cunningham?

A. No; I am telling the jury that both of them came into the office, and it was at their request——

Q. No; I am asking you to tell us what Mr. Lee Chong told you about Mr. Mookini; what was said?

A. He didn't quote any of Mr. Mookini's conversation, to me, that I recall.

(Testimony of Charles I. Deville.)

Q. Was he talking about the May 12th bill at the time he said Mookini and Cunningham had come in; or the September bill, or both?

A. Both; he was talking about both at the same time, but as we spoke of each in turn he said that they were both in there.

Q. They might both be in there without both directing or proposing the change; didn't he tell you how the changes were made—explain the procedure, or what was done or who did it, and all that sort of thing?

A. Yes, to the extent that he stated that he had Mr. Roche fix these vouchers up. [500]

Q. That Mr. Roche had done it?

A. That's correct.

Q. I mean, with reference to participation of either Mr. Cunningham or Mr. Mookini in the process of changing or the giving of directions, or anything of that kind?

A. Well, to the best of my recollection and belief, Mr. Lee Chong said or led me to believe that it was done jointly, that they were both there, that it was at their request that these changes were made.

Q. At each time, in May and in September?

A. That's what he told me.

Q. You don't recall any particular reference to anything said or done by Mr. Mookini as distinguished from Mr. Cunningham that he told you?

A. No, he made no distinction between the two.

(Testimony of Charles I. Deville.)

Q. They were there at one time together, but that's a very different thing from saying that they both ordered and directed the changes; you understand what I mean?

A. Yes, I understand what you're driving at; I am just quoting Mr. Lee Chong's conversation to me.

Q. I see; all right.

A. If it's in order, I'd like to also state that the questioning went further, and that Mr. Lee Chong refused to permit me to see his books.

Q. Well, I don't believe it's particularly in order, but now that you've said it we'll let it go in.

A. I just wanted to be fair.

Q. What do you mean, he refused to let you see his books? As a matter of fact, he told you to look at his books and let you take pictures of them?

[501]

A. Yes; after about my sixth visit he finally permitted me to take pictures of certain pages in his Chinese record book.

Q. That isn't proper to interject here; we let you see these books and all the records you wanted to see; I don't know about how much time it took; the fact is, you ultimately saw all he had?

A. No sir.

Q. You didn't?

A. No sir.

(Testimony of Charles I. Deville.)

Q. What was it you particularly wanted to see?

A. I asked him for his receipts for the month of May.

Q. His receipts for the month of May?

A. That's correct; I mean by that, the receipts for the vegetables which he purchased from outside sources.

Q. You mean the receipts for the money for the original voucher that he had expended?

A. That's correct.

Q. And what did he tell you—that he had them, or wouldn't give them to you, or what?

A. On this particular occasion he said that Mr. McGregor had them.

Q. Well, we'll find out about that.

A. Well, I phoned Mr. McGregor; I phoned from Mr. Lee Chong's telephone, and McGregor said that he never had them; and I asked Mr. Lee Chong about that, and he said maybe Chun Yau Chee has these, and he explained that Chun Yau Chee had gone to China during the latter part of June, 1934, so that they were not available.

Q. And so that's the only thing you didn't get that you wanted, were the receipts for the month of May? [502]

A. Let me put it another way; the only thing I had a chance to look at that I wanted was his Chinese record book.

Q. You got his Chinese record book, you got his statements, you had him explain to you defi-

(Testimony of Charles I. Deville.)

nitely how these things had been done down there, he gave you a full statement about all the questions you asked him about what happened?

A. No, I wouldn't say that; he gave me a full explanation with regard to the May 12th and September 1st vouchers, but I would say he was evasive on other points that are not probably material to the issue.

Q. No; you'd say most anything if we let you carry on far enough.

A. Well, you're asking me, Mr. Ulrich.

Q. The matter of the May 12th and of the September 1st statements were gone into and explained along that line that you've said?

A. That's correct.

Mr. ULRICH: That's all.

Mr. MOORE: That's all. The case for the United States.

Mr. ULRICH: If Your Honor please, at this time defendants present a motion for an order of the Court to direct a verdict of "not guilty" and dismissing the counts on the prosecution's own evidence.

We have a considerable body of authority of law, and I anticipate that the arguments on the facts may be somewhat prolonged. Mr. McGhee will handle the legal end of the thing more particularly.

And even at the conclusion of that argument I do not feel that the defendants would be ready to proceed this morning, unless the Court feels it is very [503] urgent that they should do so. I would suggest that we permit the jury to be excused at this time, and proceed without our motion and to argue on the motion.

The COURT: Would you be prepared to take up the matter of instructions?

Mr. ULRICH: We have, I wouldn't say, a complete list of instructions; we have, I think, probably the bulk of those instructions ready to present at this time. In other words, I think we could accomplish a great deal that would have to be done in the absence of the jury that it would be unfortunate if they were required to stay around while all this is going on; I think it will probably result in a dismissal anyway before we get through.

The COURT: Gentlemen of the jury, at this time I wish more emphatically than before to caution you about secrecy in this case. You will now be excused until nine o'clock Monday morning.

(Jury retire from courtroom—10:22 a. m.)

Mr. McGHEE: This motion, Your Honor, is based upon the fact that there has been no evidence here introduced sufficient to support a conviction in this case, for numerous reasons. The evidence fails to show that these defendants, or either of them, made or offered to be made, presented or caused to be presented a fraudulent claim upon the United States or any department thereof.

The Court will recall the language of the statute, as to the first ground; it provides that "whoever shall make" (quoting), "knowing such claim to be false, fictitious, or fraudulent", is guilty of the crime charged in this indictment. [504] The vouchers in this case and the invoices that have been introduced in evidence and the exhibits that have been so much talked about here show that they were not presented to the Government of the United States through any department thereof or any officer of the United States; each of these vouchers, the particular voucher of May 12th, 1934, are headed "Chun Yau Chee, Successor to Lee Chong Co." It may not be of any importance, but the Court will recall that the indictment charges as to May 12th that the voucher was in the sum of $231.00, purporting that Lee Chong Company had delivered these groceries. Now, these vouchers were billed "C. C. C. Camp Schofield Barracks Upper-post, Schofield, Oahu, T. H." The only bill in the whole outfit that is billed otherwise is the bill that was made at the request of Captain Miles, according to his own testimony, of September 1st, 1934, which was billed to the Canteen, in the sum of $72.50. Now, what is this C. C. C. Camp? It's not the United States Government, it's not a department of the Government, we don't know what it is, it may be . . . (argument continued).

Mr. ULRICH: May I just supplement Mr. McGhee's remarks as to one of the points which he

has urged, because to me it seems to be a perfectly conclusive contention at this time; it is the statute under which this case is being presented to the Court, or, rather, to the jury on the facts at this time; it is, "Whoever shall make . . ., shall be fined", and so forth and so on. This argument is directed to the evidence that's before the Court. I'm not asking the Court on this phase of the matter to reconsider the indictment in the case at all. The evidence before the Court shows this, that the C. C. C. Camp, so far as the [505] financial situation out there was concerned, was partially a Government enterprise and partially a non-government enterprise. The Government's own testimony is to the effect that there were several funds out there, all under the direction or control of Mr. Miles, the Director of the Camp; one of those funds was the Mess Fund; that's the only government fund that comes into the picture, so far as this case is concerned. . . . (Argument continued.) . . . That's just one of the points that's been raised by Mr. McGhee, and I submit it's conclusive and that on that ground the defendants, and certainly Mr. Lee Chong, are entitled at this time, Your Honor, to a directed verdict of not guilty, which would be a dismissal of the case on the prosecution's evidence.

Mr. MOORE: May it please the Court, the basis of this action is fraud against the United States Government; and the word "fraud" is defined as

any means, scheme, or artifice by which any person is led to pay some money to which he would not otherwise be entitled. In this particular case the indictment—I'll just cover the statement of Mr. McGhee that this indictment is faulty because it says "Lee Chong Company" and not Chun Yee Chow, or something like that . . . (argument continued) . . .; and, so far as this Mess Fund is concerned, when you have money paid out of that for a purpose that it is not established for, the fraud is self-evident. And we submit, may it please the Court, that this motion to dismiss is not well taken.

Mr. McGHEE: Now, if Your Honor please, there's no question about the fact that Mr. Lloyd's testimony, Mr. Miles' testimony, and Captain Baldwin's testimony, that certain [506] funds went out to Schofield Barracks for the purchase of foodstuffs. There is no evidence, however, that the Camp Director out there who expended those funds was an officer of the United States Government. It's entirely possible that those funds were turned over to Mr. Miles as a Territorial employee . . . (argument continued) . . . and I submit the Court could not take judicial notice, if at all, of a regulation without having that regulation directly before him in order that he may be informed as to what that regulation was at the time it is alleged that these crimes were committed.

Mr. ULRICH: Just a word, if Your Honor please, on the point I have discussed before . . .

(argument continued) . . . I submit that the evidence shows the bill was not presented to the United States Government; that it was presented to a man who had the dispensing of government and non-government funds, and that that man either paid it one way or directed it to be charged one way or the other, and nothing from which the Court could possibly hold that there was the very crime and the only crime charged in this indictment, namely, the presentment of a bill for payment by the United States Government and out of Government money.

The COURT: The Court noted that in one breath counsel argued that there was nothing to show that this C. C. C. Camp was a government activity, and in the next statement he said there is nothing to show that the United States Government didn't get value received for every dollar it paid. The two statements are entirely inconsistent, and the last statement clearly admits that he believes that [507] this was a United States Government activity; and that is all the Government charges in the indictment or is required to do under the statute. If this is a department of the United States Government, or, again, quoting Mr. Ulrich's language this time, "a service of the United States", it then meets the requirements of the law.

Now, if this were a mere matter of formal bookkeeping, of course there would be nothing to go to the jury. Mr. Lee Chong would not be con-

cerned whether he was to be paid out of a canteen fund or some other fund; he would be concerned with getting payment; but he is charged here with presenting a false bill or voucher, one that is fictitious and not true in its statement; when a bill is presented for payment it is presumed to represent the correct transaction, correct prices, and the correct quantities, and the correct character of the goods presented on that bill or voucher. The evidence in this case is to the effect that that was not done in this case, that a number of these items were not true and correct, that they were falsified or made fictitious. The Court does agree, however, with the contention that what was done would have to be intentionally and knowingly done, and will so instruct the jury if requested; but that's a matter for the jury to determine in determining the weight and value of this evidence.

The Court is of the opinion that there is evidence that's been presented in this case to warrant a verdict at the hands of the jury. The motion for a directed verdict or to dismiss is DENIED.

Mr. ULRICH: Defendants note an exception to the ruling of the Court. [508]

The COURT: Exception is allowed; let the exception be noted.

Now, as to this matter of instructions. The Court indicated a moment ago that it might be well to take them up at this time. If counsel is not entirely prepared, we might save time by deferring

until Monday afternoon; but I would urge by all means that you have such instructions as you want to present ready at the conclusion of Monday morning's session whether the evidence is actually concluded at that time or not.

Mr. ULRICH: Very well, Your Honor.

The COURT: The Court will now adjourn until 9:00 o'clock Monday morning.

(Adjourned—11:02 a. m.) [509]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Monday, May 20th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States, and stipulate that the jury is present.

Mr. ULRICH: Ready for the defendants, and we'll also so stipulate.

The COURT: Let the record show the stipulations in the presence of the jury. You may proceed, Mr. Ulrich.

Mr. ULRICH: Your Honor, we proceed at this time with the defendants' case.

LEE SAU CHONG

being first duly sworn as a witness in behalf of the defendants, testified as follows: [510]

Mr. ULRICH: If Your Honor please, Mr. Lee Chong speaks English well enough for all ordinary purposes; I think we'll be able to get along entirely without an interpreter; we have carried along ordinary conversations with him. It may be we'll want to ask for an interpreter as to questions now and then; however, I'll try to get along.

The COURT: If you think it's necessary, we can send for the official interpreter.

Mr. ULRICH: If he can just be ready; I don't know that I'll need him.

The COURT: Mr. Bailiff, see that the official interpreter is on call at need.

Mr. MOORE: Your Honor, I believe that the ruling on the motion that was made here last Friday should be given in the presence of the jury, but that there should be of course no reason for it —just the ruling itself.

Mr. ULRICH: I don't know that it's necessary, but now that it's been mentioned in the presence of the jury it might as well be made in the presence of the jury; I think the ruling has been properly made in the record.

The COURT: If there's any question about it, we'll say that the motion is denied, and defendants excepted, and the exception is allowed.

(Testimony of Lee Sau Chong.)

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Lee Chong, how old are you?

A. 42.

Q. What is your connection with that certain business known as the Lee Chong Company?

A. Manager for Lee Chong Company. [511]

The COURT: Now, Mr. Witness, you're not talking to Mr. Ulrich; you're talking to twelve men over there; it's important that they should hear you.

Mr. ULRICH: How long have you been managing that business?

A. Since 1934.

Q. Who is the present owner of the business?

A. After 1934 it was Mr. Lee Kim Kip.

Q. In 1934 who owned the business?

A. Chun Yau Chee.

Q. When did it change hands from Chun Yau Chee to Lee Kim Kip?

A. Around June of 1934.

Q. Mr. Lee Chong, during the year 1934 you had certain business dealings, did you not, with what was known as the C. C. C. Camp at Schofield Barracks?

A. Yes sir.

Q. Will you explain how you first started to do business with the C. C. C. Camp?

A. Around April, 1934, Mr. Cunningham come down our office and tell me to go up there and see Mr. Miles and Mr. Mookini.

(Testimony of Lee Sau Chong.)

Q. Mr. Cunningham came to your office and told you to go out there and see Mr. Miles and Mr. Mookini?

A. Yes sir.

Q. And did you go out to the Camp?

A. Yes sir, I did.

Q. And whom did you see out there?

A. Mr. Cunningham introduced me to Mr. Miles and Mr. Mookini.

Q. There has been some suggestion in the evidence that perhaps Major Mahaffy might have been there at that time; was he there—Major Mahaffy, who testified here?

A. I didn't see him there. [512]

Q. You did not see him there; so he was correct in saying that he would not remember you being there?

A. Yes sir.

Q. As a result of your conversation with these gentlemen at that time what happened relative to the commencement of any business with the Camp by you?

A. I don't quite understand you, Mr. Ulrich.

Q. Did you get an order at that time?

A. Yes, they all agreed to give me the order.

Q. That was the first order you got?

A. Yes, the first order.

Q. Who gave you the order?

A. Mr. Cunningham, Mr. Miles, and Mr. Mookini.

(Testimony of Lee Sau Chong.)

Q. They were all there together, but who gave you the order or the list, whatever it was, you were to bring out?

A. Mr. Cunningham.

Q. And that was the first order that you had from the C. C. C. Camp?

A. Yes sir.

Q. Now let me ask you this, Mr. Lee Chong: At the time that you took this order, or any subsequent orders, did you have any knowledge of the way in which the various funds at the Camp were handled; did you know anything about the Mess Fund, for example?

A. No sir.

Q. Did you know anything about the Canteen Fund?

A. No sir.

Q. Or the way the equipment was bought out there, did you know anything about that?

A. No. [513]

Q. You delivered goods to the C. C. C. Camp, did you, on that first order?

A. Yes sir.

Q. And on later orders?

A. Later, from that time until October, 1934.

Q. And when you would send your bills to the Camp—I call your attention to the fact that every bill in evidence, with one exception which we'll comment on later, is directed just "C. C. C. Camp,

(Testimony of Lee Sau Chong.)

Schofield Barracks"; that's the way you billed them out there, was it?

A. Yes sir.

Q. There came a time, Mr. Lee Chong, I believe, when some goods were ordered for a Mothers' Day dinner; do you remember that?

A. Yes sir.

Q. When was that order placed, if you remember?

A. The order was placed May 11th.

Q. May 11th?

A. Around May 11th.

Q. With reference to Mothers' Day, what day was Mothers' Day, if you recall, last year; the Sunday was on what date?

A. I don't remember what day, Sunday or Monday, but Mr. Cunningham placed the order for the list of goods, that's around May 11th.

Q. May 11th?

A. Yes.

Q. When that list of goods was ordered, do I understand that Cunningham brought the list to you?

A. Yes sir.

Q. Did anybody else come with him?

A. No.

Q. He was alone when he ordered those goods, is that right?

A. Yes sir. [514]

(Testimony of Lee Sau Chong.)

Q. Now, was there anything said about the way in which any article on that list was being ordered should be billed to the Camp?

A. Well Mr. Cunningham he had a list in his hands, and he called that article of goods, and I had a paper and marked it down whatever he give it to me.

Q. You marked down whatever he gave you of the list, is that what you mean?

A. Yes sir.

Q. Well, I'll ask you this: Were there any flowers on the list from which he was ordering to be delivered to the Camp?

A. Yes sir.

Q. Did he say anything in particular to you about how you were to charge or list those flowers?

A. Yes sir.

Q. What was said?

A. He said that "flowers not edibles", and he want to change as oysters; then I ask him, "Why you want to have change to oysters?" So he said that the oysters was ordered by Mr. Miles.

Q. That Mr. Miles had ordered it to be done?

A. Yes, that's why he wanted the oysters charged to the bill.

Q. Did you ever get any definite information at that time as to why the change was wanted excepting that it had been directed by Mr. Miles?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Was there anything which explained to you—did you know why Mr. Miles wanted to have it done that way, for example? [515]

A. He told me that the cut flowers is not eatables, so he say that Mr. Miles want me to charge as what he told me to charge.

Q. Was that all?

A. That's all.

Q. No further explanation of any kind?

A. No sir.

Q. So that you merely knew that for some reason Mr. Miles wanted these flowers, which were not eatables, charged as oysters, which were eatables?

A. Yes sir.

Q. Then did you prepare that list of goods which was to be taken out there for delivery—get them ready to deliver?

A. Then I marked down the list what Mr. Cunningham give it to me, and turn it to Monty, my bookkeeper.

Q. Monty, your bookkeeper?

A. Monty Roque.

Q. You turned the list over to him, is that right?

A. Yes sir.

Q. And he made the suitable arrangements to have it taken out, is that what you mean?

A. He make it out, the bill.

Q. Were any flowers bought to go out on that order?

A. On the May 12th order, yes.

(Testimony of Lee Sau Chong.)

Q. Yes, on the Mothers' Day order?

A. Yes sir.

Q. Where did you get them?

A. That's our driver or someone, Chun Yau Chee, he buy that.

Q. You mean, they got the flowers?

A. Yes, they buy the flowers.

Q. Well, finally the goods were ready and were taken out to the Camp, is that right?

A. Yes sir. [516]

Q. Did you go out with that load yourself?

A. Yes sir, I did.

Q. And when you went out there—by the way, when was it that you took that load out, what day, if you recall?

A. That's May 12th.

Q. Was it the day before Mothers' Day?

A. Mothers' Day is the 13th.

Q. Was it the day before Mothers' Day, if you recall?

A. All I remember it was around May 12th.

Q. When you went out with this load of goods who drove you out; who else went with you?

A. Louis Hutchinson, the driver, and I.

Q. Louis Hutchinson and you? Did you take with you the bill which you say had been prepared by Mr. Monty Roque, your bookkeeper?

A. Yes sir.

Q. Did you take merely one copy, or more than one copy of that bill?

(Testimony of Lee Sau Chong.)

A. One original, one duplicate.

Q. One original and one duplicate?

A. Yes sir.

Q. I now show you, Mr. Lee Chong, the United States Government's Exhibits "B" and "C", the one being a carbon copy, so far as typewritten material is concerned, of the other; and ask you to state whether or not those are the bills that you took out with you to the Camp that day with the Mothers' Day load?

A. That's the one (indicating).

Mr. MOORE: Indicating which?

Mr. ULRICH: Indicating Exhibit "B". What about the other one, Exhibit "C"? [517]

A. Not this one.

Q. Well, Mr. Lee Chong, look at these carefully and you'll see that one is a carbon copy of the other. You said that you took the original and a carbon copy; this is no different excepting it's a carbon copy. I just want to know; if you think you had another carbon, all right, but if you think that is the carbon you took, please say so.

A. I remember this original, but this (indicating) is a copy.

Q. If you don't identify the copy, that's all right; do you think you had another carbon? You said a moment ago you delivered a carbon copy of the original?

A. I remember the original and duplicate; the duplicate is the same as the original.

(Testimony of Lee Sau Chong.)

Q. What have you to say about this: You've identified Exhibit "B" as the original you took. What about "C"; to the best of your belief, is or is not that the carbon that you took out at the time?

A. Well, the copy of this original is the same.

Q. By that do you mean that if it's the copy of the original it may have been the copy that you took with you?

A. This is one original and with the duplicate; it's the same.

Q. By that do you mean—I just want to know do you mean that's the original and duplicate that you took out there, or not?

A. Yes, that's the ones.

Mr. ULRICH (showing documents to the jury): The jury has seen this, I believe, the original with the paper plates and napkins on it, and the carbon copy.

Q. When you arrived at the Camp who was there? [518]

A. Mr. Miles and Mr. Cunningham.

Q. Mr. Miles and Mr. Cunningham? Where did you take this load of groceries to, at the C. C. C. Camp?

A. I take it to the C. C. C. Camp, that kitchen over there.

Q. To the kitchen?

A. Yes sir.

Q. When I ask you who was there, I am talking of the place where you stopped and unloaded your groceries; who was at that place?

(Testimony of Lee Sau Chong.)

A. Mr. Miles and Mr. Cunningham.

Q. When you arrived did you have any talk with Mr. Miles and Mr. Cunningham, or Mr. Miles, or Mr. Cunningham?

A. Yes sir, I did.

Q. What happened, and what was said?

A. Yes, I did see Mr. Miles there, and Mr. Cunningham there, right at the kitchen; I say, "Good morning, Mr. Miles"; I said, "I have stores for you, will you please check that up."

Q. You said you had what?

A. I had stores.

Q. Stores?

A. Yes; "I have vegetables and fruit and so on for your Camp," I said, "please have check it up"; so Mr. Miles he receipted—the envelope had two bills inside, and he open up and take a look at it and he read everything out.

Q. By that do you mean these two bills?

A. Yes sir.

Q. Referring to Government's Exhibits "B" and "C"?

A. Yes sir.

Q. Then what happened?

A. And he looked at the bill and he called Mr. Cunningham; he said, "Johnny, did you buy any oysters from Mr. Lee Chong?" He says, "Why no"; he says, "Do you remember telling me that is the oysters in place of the cut flowers?" He says,

(Testimony of Lee Sau Chong.)

[519] "Oh yes, you told me to change that, cut flowers was put as oysters"; he says, "Oh yes".

Q. What did Miles say?

A. Mr. Miles say, "Oh yes; if any change on that, go ahead, check it up and release Mr. Lee Chong and let him go back to the store."

Q. By the way, that is Mr. Miles and Mr. Cunningham that went out of the door there; do you recognize them?

A. Mr. Miles, yes.

Q. Those two gentlemen that just went out of the door, did you recognize them?

A. I didn't see.

The COURT: We'll have them called, if you wish, Mr. Ulrich.

Mr. ULRICH: No, I don't think it's necessary.

A. Mr. Miles say, "Oh yes; Johnny, you check that load out and O. K. the bill, and release Mr. Lee Chong to go back to the store."

Q. Let me just understand; I have a little difficulty in understanding you. I understand that Mr. Miles took the list and looked it over and then said to Mr. Cunningham, "Did you order any oysters, Johnny?" or something like that, is that right?

A. Yes sir.

Q. And Cunningham said to him, "No, those are the flowers that you told me to get", or something of that kind, is that right?

A. Yes. I repeat again: When I deliver the goods to the C. C. C. Camp that morning, and I

(Testimony of Lee Sau Chong.)

see Mr. Miles over there and Mr. Cunningham over there, right in the kitchen there, and I say, "Good morning, Mr. Miles"; he say, "Good [520] morning, Lee Chong"; and I handed that bill to Mr. Miles, and he take off that bill from the envelope and he take a look at it, and he call Mr. Cunningham; he say, "Johnny, you buy any oysters from Mr. Lee Chong?" He say, "Why no; don't you remember you told me to buy the cut flowers for the Mothers' Day use and to charge as to the oysters?". He say, "Oh yes; whatever is changed is all right; go ahead and check that load and release Mr. Lee Chong and let him go back to the store."

Q. Now, was anything said between Mr. Miles and Mr. Cunningham in your presence there about any other changes that were to be made in this bill?

A. Yes; then Mr. Cunningham said—he call him "Billy"; he say, "Billy, we have some paper——"

Q. Called whom Billy?

A. Call Mr. Miles. He say, "Billy, you had those paper plates and paper napkins and assorted candy and assorted nuts, should be changed"; he say, "Johnny, any change——"

Q. Who said this?

A. Mr. Miles.

Q. Said to Cunningham, calling him "Johnny"?

A. Yes; he say, "Johnny, if anything should be changed, go ahead and have it changed."

(Testimony of Lee Sau Chong.)

Q. Then what happened—anything else?

A. Then Mr. Cunningham check up the load out of my car and he sign for the bill.

Q. And——

A. One minute. Mr. Cunningham told me, he say, "Later, one day or two, we are going come down (my office) and arrange a change."

Q. You mean, he was coming to town to fix up the other [521] changes that he was talking to Miles about?

A. Yes sir.

Q. Were you there as those goods were checked off from the truck you had them in on to the kitchen floor, or wherever it was they were unloaded on?

A. Yes sir.

Q. You were there as the truck was unloaded?

A. Yes sir.

Q. And did you see the goods as they were checked off and watched them being checked off there?

A. Yes sir.

Q. By Mr. Cunningham, as I understand it?

A. Yes sir.

Q. I am going to ask you, Mr. Lee Chong, to state, if you will, whether or not, with the exception of the oysters listed here, which you've told us were flowers which were delivered that day, with that exception, can you state whether every article on this list was actually delivered there that morning at the C. C. C. Camp, was it?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Were there paper plates delivered?

A. Yes sir.

Q. Were there paper napkins delivered?

A. Yes sir.

Q. And the strawberries, and the crabs?

A. Everything delivered on that bill except the oysters.

Q. And what was delivered in place of the oysters?

A. Cut flowers.

Q. Now, Mr. Lee Chong, was any liquor delivered there that morning by you to anyone?

A. No.

Q. Can you state definitely whether or not there was any [522] liquor taken out with you on that wagon?

A. There's no more liquor.

Q. "No more liquor", or no liquor?

A. No liquor, I mean.

Q. You heard the testimony that's been given here by Mr. Cunningham, have you not; you heard Mr. Cunningham's testimony to the effect that you took a package out of that car, a box about like this (indicating), and handed it to him and told him that it was liquor for Mr. Mookini; is that testimony true, or is it false?

A. It's not true.

Q. Did you hand any box to Mr. Cunningham and tell him that it was for Mr. Mookini?

A. Never.

(Testimony of Lee Sau Chong.)

Q. Did you unload and carry away from the truck, so far as that's concerned, any box yourself?

A. No sir.

Q. How was the unloading done?

A. Unloading done by our driver, Louis Hutchinson; he do all the carrying.

Q. He carried the goods over and put them down in the kitchen?

A. Yes sir.

Q. Do I understand that you didn't even handle any of the packages that were delivered there that morning, yourself?

A. Yes sir.

Q. You further heard the testimony that's been given by Mr. Cunningham to the effect that there was a time shortly after you commenced delivering goods out to the Camp when you came to him and told him that you wanted him to O. K. [523] bills in which there would be camouflaged groceries which were to be personally delivered to Mr. Mookini; do you remember that testimony?

A. I want you to repeat again.

Q. I am calling your attention now to some testimony that was given by Mr. Cunningham, to the effect that he came to you shortly after you started delivering goods out there, one day, and asked you, or, rather, that you asked him if he would O. K. bills in which you would hide certain of Mr. Mookini's personal groceries; do you remember him saying that on the witness stand?

(Testimony of Lee Sau Chong.)

A. Yes sir.

Q. Is there any truth at all in that testimony?

A. Not true.

Q. Did you ever have a talk with Mr. Cunningham in which you even discussed the matter of any personal groceries to be sent to Mr. Mookini?

A. No sir.

Q. Did you ever talk to him about OK'ing any bills which could in any way affect Mr. Mookini's personal groceries or anything of that kind at all?

A. No.

Q. As a matter of fact, Mr. Lee Chong, did you ever have an account with Mr. Mookini, and, if so, when?

A. I have account with him until September, 1934.

Q. Not until September, 1934; and when you opened that account for him did you keep a record of it in your books?

A. Yes sir, in our books.

Q. Before opening that account with Mr. Mookini in September of 1934, was there any buying or selling of goods to Mr. Mookini by you? [524]

A. Yes sir.

Q. What kind of sales?

A. Some groceries and some fruits and vegetables.

Q. I know, but were they cash or were they credit sales?

A. Credit sales until September, 1934?

(Testimony of Lee Sau Chong.)

Q. I am talking now about before September.

A. Before September all the time that is cash.

Q. That is, whatever he got he paid for at the time?

A. Yes sir.

Q. And, so far as that's concerned, was there much of any kind of groceries sent to him or bought by him for cash, was there much of it?

A. Not much.

Mr. ULRICH: I'm sorry, Your Honor; I thought I had some material here that's still in the office—I haven't brought it over; so I have to withdraw that question for the moment.

Q. Now, Mr. Lee Chong, I show you the United States Exhibits "D" and "E", the one being a carbon copy of the other as to typewritten matter thereon; I call your attention to the fact that those exhibits show the same total as the exhibits which you've just identified here as having been taken with you with the load; and I ask you if you personally had anything to do with the making of the changes which appears have been made, eliminating the paper plates and the strawberries and putting other things in their places on the second bill; were you there when that was done and do you know how it happened to be done when it was done?

A. These changes, Mr. Cunningham tell Mr. Monty to do that. [525]

Q. He told Mr. Monty—and by that you mean your bookkeeper—to do that?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Were you there when he told him to do that?

A. No.

Q. You weren't even there when that was done, is that right?

A. Yes sir.

Q. You later learned that Mr. Cunningham had told Mr. Monty to make those changes?

A. Yes sir.

Q. Going back again to the original bills that were taken by you to the Camp, what did you do—showing you Exhibit "B"—with that bill after it had been checked over by Mr. Cunningham?

A. I take this bill back; I give it to Mr. Monty to keep file on that.

Q. After the goods had been checked off as they were taken off the truck there, did Mr. Cunningham put his signature or initials on the bill?

A. Yes sir.

Q. Do you recognize that as his initials (indicating)?

A. Yes; "J. E. C."

Q. Then you took that original with you as your receipt back to your place of business, is that right?

A. Yes sir.

Q. What did you do with the carbon copy, if you know?

A. Mr. Cunningham get this carbon copy, the duplicate.

Q. That is, you left that with him?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. That was the usual practice; you would take the original back with the receipted signature, and leave a copy for their records out there? [526]

A. Yes sir.

Q. And that was done at that time?

A. Yes sir.

Q. I have asked you the question, Mr. Lee Chong, as to whether you ever had any talk with Mr. Cunningham about putting any of Mr. Mookini's groceries on the Camp bills; I'll ask you now whether anything of that kind was ever done?

A. Never.

Q. Mr. Cunningham referred to groceries going to Mr. Mookini in an amount in one instance as large as over a hundred dollars in a month. Did Mr. Mookini ever purchase from you in any month or at any time groceries in any such amount as that?

A. No.

Q. Mr. Lee Chong, do you recall, later in your dealings with the C. C. C. Camp, a time when certain groceries and other things were ordered for a luau to be held out there early in September?

A. Yes sir.

Q. Do you remember that?

A. Yes sir.

Q. Do you recall who placed the order for that luau?

A. Mr. Cunningham.

Q. Did he bring with him a list of any kind?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. You were there when the list was brought, were you?

A. Yes sir.

Q. How was the list taken down by you there at the store?

A. He had the list of goods on his hand, and he called to me; I had a paper and marked down all what he give it to me.

Q. Do you recall whether or not there were any articles on [527] that list such as keawe wood and chicken wire, and things of that kind, which were not eatables?

A. Around September 1st, yes.

Q. On the order that he gave you for September 1st were there such articles?

A. All that articles was sent; he give me the vegetables and fruits, whatever he give me, it's the same time; there's no separate bill or anything.

Q. Beg pardon?

A. He give me that on September 1st, that order; he give me one time the order.

Q. At one time he gave you the order for all of these things, is that what you mean?

A. Yes sir.

Q. Now I am asking you whether or not on that order there were these articles of keawe wood and bags and paper plates, and so forth, which were not eatables, when he gave it to you on the list?

A. Yes sir.

Q. What if anything was said to you at that time by Mr. Cunningham as to what was to be done

(Testimony of Lee Sau Chong.)

in the method of charging those articles, those non-eatable articles?

A. He tell me to have changed as vegetables.

Q. To have changed to vegetables?

A. Yes, according to what Mr. Miles——

Q. That Mr. Miles had told him to do that, is that what you mean?

A. Yes, to what Mr. Miles told Mr. Cunningham he want us to do that way.

Q. You took down the list did you? [528]

A. I took down from his list.

Q. What did you do with the list that you took down?

A. Give it to Mr. Monty, my bookkeeper.

Q. Was Mr. Monty your bookkeeper there at the time that Mr. Cunningham had given you the list, and did he hear what was said about making the changes?

A. Yes sir.

Q. This was all done in the presence of your bookkeeper.

A. Yes sir.

Q. Then, do you know what was done in the matter of making up that list finally by your bookkeeper? I show you United States Exhibit "G", which is the bill that was first sent out there on the September 1st order; did you personally have anything to do with the preparation of that exhibit, that writing there?

A. No.

(Testimony of Lee Sau Chong.)

Q. Who did make that?

A. Mr. Monty.

Q. Mr. Monty, your bookkeeper?

A. Yes sir.

Q. Now I'll ask you this, Mr. Lee Chong: Either at the time that the Mothers' Day order was placed, or at the time that the luau order was placed, or at any time when you were there when anything was said about making any of these changes, or any of these times, was Mr. Mookini present?

A. No.

Q. Did he have anything to do, for example, with the giving of this order for the luau dinner; did Mookini have anything to do with giving that order?

A. No; only Mr. Cunningham.

Q. I ask you this particularly in view of certain evidence which was given here by this man Deville, sitting in [529] front of you here, the Secret Service detective; he testified, as you may remember, that you had told him that Mr. Mookini and Mr. Cunningham had directed these orders?

A. No sir.

Q. You did not tell him that Mr. Mookini had directed making any of these changes?

A. No sir.

Q. Now, was there a time when Mr. Mookini did come in there, when Mr. Cunningham was there, if you can recall, and if they were there in connection with either of these orders?

A. No.

(Testimony of Lee Sau Chong.)

Q. Do you recall a time—you said he didn't have anything to do with the making out of the changed Mothers' Day bill, is that right?

A. Yes sir.

Q. Was this luau order of goods delivered?

A. On September 1st?

Q. September 1st.

A. Yes sir.

Q. Where?

A. That's the C. C. C. Camp truck come and get it.

Q. In other words, that was taken from your place of business by the C. C. C. truck?

A. Yes sir.

Q. You did not deliver this to the Camp grounds, is that right?

A. No.

Q. Now, Mr. Lee Chong, was anything said about this luau order or about changing the bill, or anything of that kind, at any later time; if so, when?

A. Changed on the September luau bill, you mean? [530]

Q. Yes; the bill as originally rendered was for $526.00, according to that exhibit there, and did not include in it or did not show on its face the keawe wood and those other things which had been delivered, as you say; now, do you recall a time when the matter of making a separate listing of those things came up?

(Testimony of Lee Sau Chong.)

A. That's in October 2nd or 3rd, Mr. Miles come to our office tell me and Mr. Monty——

Q. Just let me get the time. In other words, it was a month after these goods were delivered, about?

A. Around October 2nd or 3rd.

Q. Around October 2nd or 3rd Mr. Miles came in to see you, is that right?

A. Yes sir.

Q. Now tell us what happened then.

A. He want me and Monty to change that keawe wood and the cigarettes and cigars and chicken net wire—the bill was $72.50—as a separate bill.

Q. As a separate bill?

A. Yes sir.

Q. And who was present at the time that Mr. Miles came in there and asked you to place on a separate bill these various articles amounting to $72.50?

A. Mr. Monty.

Q. Just you and Mr. Monty and Mr. Miles?

A. Yes sir.

Q. That, you say, was about the 1st of October?

A. Around the 2nd or 3rd of October.

Q. Was a separate bill prepared, listing the wood and those other things, amounting to $72.50, separately?

A. I remember Mr. Miles ask us to change that as a separate bill, $72.50; that's all I remember.

[531]

(Testimony of Lee Sau Chong.)

Q. That he wanted you to change it to a separate bill. Did somebody change it, put it on a separate bill?

A. That time Mr. Monty have change that according to his order.

Q. Mr. Monty, your bookkeeper, at that time complied with his request and did make a separate bill, is that what you mean?

A. Yes sir.

Q. What if anything did you do with that bill on which there had been listed the wood, and so forth, separately?

A. I not quite understand you.

Q. Well, if I can lead a little bit: Do you remember, then, that you took the bill out to the Camp one day?

A. I remember I took the bill to the Camp around October 4th or 5th.

Q. October 4th or 5th you took the bill to the Camp?

A. Yes sir; that's the month of September bill, and statement.

Q. What bill did you take to the Camp?

A. I don't mean the bill—the statement.

Q. All that you have testified to as having happened at that time was that Mr. Miles came in and told you and Mr. Monty that he wanted to have these non-edibles listed on a separate statement, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Was anything said at that time, the first time, then, about changing them to the Canteen or any particular fund?

A. No.

Q. Just separate it, that's all?

A. Separate, that's all.

Q. I show you two documents, one being the United States [532] Exhibit "J", marked "C. C. C. Camp Canteen", and the other being a copy of the same bill except that it's addressed "C. C. C. Camp" without the word "Canteen" on it. I'll ask you to state which of those documents, if either one of them, were prepared when Mr. Miles first came in to you there and asked you to list this separately?

A. Mr. Miles asked me to separate on this one.

Q. Separate that one, that's the one you made out the first time he came in?

A. Yes sir.

Mr. ULRICH: First I'll ask for the original, if you have it, Mr. Moore, the one that's not marked "Canteen".

Mr. MOORE: How much is it for?

Mr. ULRICH: The same amount, $72.50. (Showing document.)

Q. I now show you the Government's Exhibit "J", and this other document, each for $72.50, one with the word "Canteen" on, the other without; and ask you which is the one which you prepared when Mr. Miles first came in to you?

A. This is the one (indicating).

Q. This one?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: I ask that this be received in evidence and given a separate number, if Your Honor please. This document has not yet been in evidence.

Mr. MOORE: No objection.

The COURT: It will be admitted.

(Marked "Defendants' Exhibit No. 1")

DEFENDANTS' EXHIBIT #1.

P. O. Box 1958 Telephone 5901

Honolulu, T. H., Sept. 1st, 1934

LEE CHONG COMPANY

Cor. Queen & Awa Streets, Aala Market

Groceries

"C. C. C. Camp" Schofield Barracks Upperpost

Oahu T. H.

The following articles in good order and condition.

Note: Please see that the articles are in good order and sufficient before signing this receipt.

Keawe Wood	$ 6.00
Chicken Wire	.50
Empty Bags	1.30
Rent for Chairs	2.00
Paper Plates, Napkin, Cups, Bowls and Spoons	37.80
Cigars and Cigarettes	10.40
Hawaiian Pudding	8.00
Flower Leis	6.50
	$72.50

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(Testimony of Lee Sau Chong.)

Mr. ULRICH: Being a bill presented by Lee Chong Company, addressed to "C. C. C. Camp", dated September 1st, 1934, in the amount of $72.50, without any designation of "Canteen". I just want the jury to note the difference between these two exhibits at this time; the one which has heretofore been [533] in evidence is marked "C. C. C. Camp Canteen"; the witness has stated that is not the one first made out when Mr. Miles first came in to request a change. The other you will notice is "C. C. C. Camp" without the designation "Canteen" on it, and that, the witness has testified, is the one that was made out when Mr. Miles first came in and requested the change, the witness also saying that nothing was said about any particular fund at that first conference.

Q. Now, Mr. Lee Chong, when you went out to the Camp with this bill, did you take—and referring now to the defendants' Exhibit No. 1—did you take anything else with you on that 4th or 5th of October, as you say, any other statement covering the balance of the bill, for example, or did you only take the $72.50?

A. That day I went out—I remember now—it's not October 4th or 5th, that's October 11th or 12th; I bring this separate statement with the month of September statement.

Q. The month of September statement?

A. Yes, take it out to the Camp; and I did take it out to Mr. Miles, and Mr. Miles not in.

(Testimony of Lee Sau Chong.)

Q. Mr. Miles was not there. Just let me understand what you mean. You took a separate statement on which the total for the month of September was included, is that right?

A. The September——

Q. This was early in October when you went out there?

A. The month of September statement and this one.

Q. You took this on a separate sheet, as Mr. Miles had asked you to do, and you also billed for the total of the month of September on a separate bill, is that right? [534]

A. No; let me explain to you. This $72.50 statement was for the month of September statement; I took it out to the Camp around October 11th or 12th; and Mr. Miles was not in, so I met Mr. Mookini in the office, so I ask where is Mr. Miles, and Mr. Mookini told me Mr. Miles went to town; and I leave those two statements inside the envelope, I put it to Mr. Miles' desk.

Q. Now, just to get back to what I'm trying to bring out; this statement here was for $72.50, wasn't it, on that order?

A. Yes sir.

Q. Now, the separate statement that you made out and also presented at the same time, was that a statement for the whole month of September, do I understand?

A. Whole month statement.

(Testimony of Lee Sau Chong.)

Q. Of September?

A. September.

Q. Now then, as to this September 1st order listed on that statement for the whole month, did it or did it not include this $72.50, or was it for the balance over and above the $72.50 on the other statement?

A. On the other statement I don't remember sure the amount.

Q. All that you know is that you had this $72.50 on a separate sheet, and then presented the month's statement at the same time?

A. Yes sir, together.

Mr. ULRICH: It's ten o'clock, Your Honor; might we have a recess at this time?

The COURT: The Court will take a short recess.

(Recess—9:59 a. m. to 10:09 a. m.)

Mr. ULRICH: Mr. Lee Chong, you were testifying about a time [535] when you went out to the C. C. C. Camp with these two bills, that is, the $72.50 bill and the month's bill. Now I want you to try to recall just about when that was, again; you said one time, I believe, in checking over my notes, and another date; just about what date was it, as nearly as you can recall, that you went out and took those bills with you?

A. I remember it was around October 4th or 5th.

(Testimony of Lee Sau Chong.)

Q. You said it was around about the 2nd or 3rd of October when Mr. Miles first came in and asked to have the change made; so it was just a day after that?

A. Yes sir.

Q. On that occasion you did nothing but leave these bills out at the Camp; and Mr. Mookini was there; and you came away again?

A. Mr. Mookini was there; I asked for Mr. Miles.

Q. You were told that Mr. Miles was not there, and you left your bills and came away?

A. Yes sir.

Q. Later you got back and found that Mr. Miles had been at your place of business in the meanwhile, did you?

A. The same morning I came back I found Mr. Monty and Mr. McGregor there, and Monty told me Mr. Miles came.

Q. That he had been there?

A. That he had been there already; so he asked Monty——

Mr. MOORE: I object to what he told him.

Mr. ULRICH: No; we'll have Mr. Monty himself tell what happened when you weren't there, because you can't tell about what happened—I beg pardon; what were you going to say? You cannot tell what Mr. Monty told you had happened [536] while you were not there; we'll have to have Mr. Monty tell that for himself.

A. Oh.

(Testimony of Lee Sau Chong.)

Q. You merely found out that Mr. Miles had been in there while you were at the Camp?

A. Yes sir.

Q. Did there come a time when Mr. Miles again came in to see you about that bill, or something to do with the account of the Camp?

A. He came in the afternoon.

Q. Did he come in again after that?

A. Yes; same day.

Q. The same day Mr. Miles came in?

A. Yes sir.

Q. What did he have to say that same day when he came in the second time?

A. He asked for that bill, to put the "Canteen" on that $72.50.

Q. Showing you the Defendants' Exhibit 1, the statement of $72.50 without the word "Canteen" on it, which you've testified was the statement that you made out the first time and took out to the Camp?

A. Yes sir.

Q. Do I understand your testimony to be that when Mr. Miles came in the second time he wanted the word "Canteen" put on that bill?

A. Yes, put on that paper.

Q. And that was done then at his request?

A. Yes sir.

Q. And then Exhibit "G" was prepared, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. With the word "Canteen" on it?

A. Yes sir.

Q. What if anything was done, Mr. Lee Chong, after that [537] about paying this bill of your or these bills of yours?

A. Paying on the September bill?

Q. Yes.

A. That was around October 11th or 12th.

Q. And what happened then?

A. Mr. Miles bring down that September month 1934 check, come to our office, and I was in, and Mr. McGregor was in, and Monty was in.

Q. Along about the 11th or 12th Mr. Miles came in with the check?

A. Yes sir.

Q. To pay on the bill, and you were there, and McGregor was there, and Monty was there?

A. Yes sir.

Q. All right. Now tell us what happened?

A. I got his check, I look it over; it was not the same amount with the September bill.

Q. Not of the same amount; well, do you recall how much had been deducted before making out the check?

A. He didn't tell me deduct.

Q. How much less, how much short was the check of the amount that you should have gotten at that time according to the way your bills had been rendered?

A. About $110.15 on the September month.

(Testimony of Lee Sau Chong.)

Q. How was that made up?

A. Mr. Miles he deduct from that month of September statement, it was $110.15, account the bill $72.50 order——

Q. The $72.50 had been taken out, is that right?

A. Yes.

Q. What else had been taken out?

A. $37.65. [538]

Q. What did he say that $37.65 represented?

A. He say that $37.65 was the May bill, deducted from May bill.

Q. Deducted from the May bill?

A. Yes.

Q. Was that the first time that Mr. Miles or anyone had suggested to you that there should be any deduction made from the May bill?

A. No.

Q. When had he done it before?

A. He never done it before.

Q. Then, I am asking you, was that the first time that any suggestion had been made to you by Mr. Miles or anyone that any deduction should be made on account of the May bill or Mothers' Day bill?

A. Yes, that's the first time.

Q. So at that time he presented a check to you which was $110.15 short, being $72.50 representing the keawe wood, and so forth, on the luau bill, and $37.65, or whatever the amount was, that he then

(Testimony of Lee Sau Chong.)

for the first time wanted to deduct out of the May bill, is that right?

A. Yes sir.

Q. And the May bill had been paid?

A. Already paid.

Q. Well, what was said about deducting this $37.65 out of the May bill?

A. I ask him, "Why deduct; because everything delivered already on the May bill; you deduct—we don't know what it's for." And he say that was deduct by himself; he never let me know, he never let us know, and he just deduct by himself.

Q. Did you take and accept the deduction at that time?

A. No. [539]

Q. You refused to accept the deduction?

A. I refuse accept the deduction.

Q. Was there any conversation had at that time between Mr. Miles and Mr. McGregor who was with you there?

A. Yes sir. Mr. McGregor ask Mr. Miles, he say, "What about you folks talking about the $37.65?" So finally Mr. Miles explain it to Mr. McGregor and say that $37.65 is not eatable stuff on the May 12th days.

Q. Did Mr. Miles tell you how you were going to get your money, or whether you were going to get your money from any other account at that time?

A. Yes; he say that the Canteen going to pay us $72.50 or $37.65.

(Testimony of Lee Sau Chong.)

Q. What was said about the money by you?

A. I said that either the Canteen or the Camp, I don't know what the money he pay us, but anyway I know we deliver the goods and I expect he pay the full amount; if they got check from Canteen I want the check of the Canteen first.

Q. In other words, you said you didn't care how they paid, so long as they paid; that's the substance——

A. So long as they pay I don't care how they pay it.

Q. What was the outcome of that conversation? I understand you did not accept the check?

A. No.

Q. Did he go away with the check—Mr. Miles?

A. He keep the check with him, yes.

Q. Did you see Mr. Miles later on that same day?

A. Sam McGregor go up with me the same day, in the afternoon.

Q. The same day in the afternoon you went out to the Camp [540] with Mr. McGregor to see Mr. Miles?

A. Yes sir.

Q. Had you told him you were coming out there to have this thing straightened?

A. Yes sir.

Q. And when you got out there did you see Mr. Miles?

A. Yes; I go out with Mr. McGregor; at the same time Mr. Miles come in.

(Testimony of Lee Sau Chong.)

Q. Who, if anyone else, was there there at the conference or conversation that you had when you went out there that time?

A. Mr. Yates,——

Q. Mr. Miles had been removed at that time, and Mr. Yates had taken his place, is that right?

A. Yes sir.

Q. Mr. Yates was successor as Director of the Camp?

A. Yes; and Mr. Mookini.

Q. Mr. Mookini was there?

A. Yes sir; and myself, and Mr. McGregor.

Q. Now then, what happened?

A. We ask for the check of what Mr. Miles say is pay from the Canteen, which Mr. Miles say Mr. Colman handle that; so Mr. Colman not around the Camp; and that time Mr. McGregor tell Mr. Mookini make out the receipt, whenever we need that money, and that time we accept the check it was stated on the receipt as balance $110.15.

Q. So you did finally accept the check?

A. Yes sir.

Q. Was there prepared a paper at that time showing the balance that you claimed?

A. Yes sir. [541]

Q. And that was written—you heard Mr. Miles' testimony, I believe, in effect that that was written by Mr. Mookini on the typewriter, dictated by Mr. McGregor, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. That did happen that way?

A. Yes sir.

Q. I show you Exhibit "K", already in evidence in this case, and ask you if that is the document that was prepared at that time and signed by yourself, is that right?

A. Yes sir.

Mr. ULRICH: I don't know whether the jury have seen this before, or not (reading):

"Honolulu, T. H.
October 12, 1934.

"Received from the CCC Camp, Camp Directors Fund, Schofield, T. H., the sum of EIGHT HUNDRED TWENTY AND 13/100 DOLLARS. As partial payment of Account Rendered of $930.28 (Nine Hundred Thirty and 28/100 DOLLARS) leaving a balance due and unpaid in the sum of One Hundred Ten and 15/100 Dollars ($110.15), for September, 1934. $820.13

LEE CHONG CO.
Per LEE CHONG,
Manager.

Q. Did you have your carbon at that time certified to by any people; showing you a carbon copy of the document that has just been read to the jury?

A. Yes, this is the copy; Mr. Mookini.

Q. And whose signature is there?

A. Mr. Yates.

(Testimony of Lee Sau Chong.)

Q. Mr. R. M. Yates?

A. Yes.

Q. You had that for your own record, to show you had a witness you were still claiming this $110.15?

A. Yes sir. [542]

Mr. ULRICH: I am going to offer the copy in evidence, with Mr. Yates' signature, if I may.

Mr. MOORE: I have no objection.

The COURT: It will be received in evidence; please mark it.

(Marked—"Defendants' Exhibit No. 2")

Crim. #8518

DEFENDANTS' EXHIBIT #2.

Admitted.

Honolulu, T. H.
October 12, 1934.

Received from the CCC Camp, Camp Directors Fund, Schofield, T. H., the sum of EIGHT HUNDRED TWENTY AND 13/100 DOLLARS as partial payment of Account Rendered of $930.28 (Nine Hundred Thirty and 28/100 DOLLARS) leaving a balance due and unpaid in the sum of One Hundred Ten and 15/100 Dollars ($110.15), for September, 1934.

$820.13

LEE CHONG CO.

Per .....,

Manager.

(Testimony of Lee Sau Chong.)

Certified a true copy

ROBERT K. MOOKINI

Q.M. CCC Camp.

(In pencil) R. M. YATES.

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Mr. ULRICH: I ask you, Mr. Lee Chong, if all these goods that you've listed here were delivered, actually delivered, of the reasonable value of the amounts that you charged for them?

A. Yes sir.

Q. All of this keawe wood, and so forth, on the bill for $72.50, was delivered, was it?

A. Yes sir.

Q. All of the remaining goods on the September 1st bill were delivered, were they; all of the remaining goods on the other of the two bills, after the items were segregated, were delivered, were they?

A. Yes sir.

Q. And, I believe, you've already testified that everything was delivered on the Mothers' Day bill as originally listed, excepting the oysters, which were flowers, is that right?

A. Yes sir.

Q. I asked you a few moments ago about your account with Mr. Mookini. I show you a book called "Customers Sales Journal", and to a page thereon where the name "Mr. R. Mookini" appears, and ask you if that is the account that was kept by

(Testimony of Lee Sau Chong.)

you for personal goods and merchandise delivered to Mr. Mookini?

A. Yes sir. [543]

Q. Calling your attention to the fact that it commences with the delivery on September 9th in the amount of $12.75, and ends with an item of October 7th of $1.65, being a bill in the total amount of $48.05; and I ask you if that is all that you ever charged to Mr. Mookini for groceries delivered to him?

A. Yes sir.

Q. That's the only account that you ever carried with him?

A. Yes sir.

Mr. ULRICH: I offer this in evidence.

Mr. MOORE: Did this man personally keep it?

Mr. ULRICH: Who kept this book?

A. Mr. Monty.

Q. That's not your handwriting?

A. No.

Mr. ULRICH: If you insist upon identification by the maker or writer, it will have to be done by Mr. Monty.

Mr. MOORE: I think that's the proper way, Mr. Ulrich.

Mr. ULRICH: Well, I offer it for identification at this time.

(Marked "Defendants' Exhibit A for Identification").

(Testimony of Lee Sau Chong.)

The COURT: At this time, before beginning the cross-examination, the Court wishes to state that, while the question of the exact dates of Mothers' Day and Labor Day may or may not become material, they have been referred to so often in this testimony that it would seem advisable at least that they should be determined. The Court has examined the calendar for the year 1934, and finds that the second Sunday in May, Mothers' Day, occurred on the 13th of May, that year, and that Labor Day, which is always the first Monday in September, occurred on the third day of September, 1934. By making this statement we will clarify the examination [544] and the record and also save considerable time should either of the parties desire to have this matter introduced in evidence, as either would have a right to do.

Mr. ULRICH: I think that counsel may agree on those dates, if Your Honor please.

Mr. MOORE: Oh, if the Court has looked them up, that's all I care for.

The COURT: Let the record show that respective counsel stipulate that Mothers' Day occurred on the 13th of May, 1934; and Labor Day on the 3rd day of September, 1934.

Mr. ULRICH: Mr. Lee Chong, do you recall any conversations that you had with Mr. Cunningham, or that Mr. Cunningham had with you at any time about Mr. Mookini—anything he said to you about Mr. Mookini?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. What do you recall that he said, and when did he say it?

A. Somewhere around or before May or June he say, "Mr. Mookini knowing too much about Mr. Miles."

Q. And what?

A. So he called Mr. Mookini—he said "that kanaka", if he start anything with Mr. Miles, he going to go jam Mr. Mookini up.

Q. Called him "kanaka" and said that if he started anything about Mr. Miles he was going to "jam him up", is that what you mean?

A. Yes sir.

Q. Now, Mr. Lee Chong, I just want to ask you another question: At any time during your negotiations with the C. C. C. Camp in connection with either the Mothers' Day order or the September order, or any other order, did [545] you know or have any idea about the particular fund that the money was to be paid out of in the Camp?

A. I did not know.

Q. Did you know, as a matter of fact, before the trial of the case whether the Canteen Fund was Government money or whether the Mess Fund was Government money?

(Testimony of Lee Sau Chong.)

A. No.

Q. You simply sent your bills to the C. C. C. Camp, is that right?

A. Yes sir.

Q. And sent the goods that they asked you to send?

A. Yes sir.

Q. And billed them the way that they told you to bill them?

A. Yes sir.

Q. Mr. Lee Chong, I show you a book in Chinese characters and ask you what it is.

A. That's the cash and payment book of Mr. Chun Yau Chee.

Q. Cash and payment book kept by Mr. Chun Yau Chee?

A. Yes sir.

Q. And Mr. Chun Yau Chee bore what relation to the Lee Chong company?

A. Yes sir.

Q. What did he have to do with the Lee Chong Company?

A. He was the boss.

Q. He was the boss when?

A. 1934.

Q. When this was kept, is that the idea?

A. Yes sir.

Q. This is in his handwriting?

A. Yes sir.

Q. You know his handwriting?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. And it is a record of what? [546]

A. The record of cash sales and paid out.

Q. Cash sales and paid out?

A. Yes sir.

Q. In other words, you mean cash received in the store and cash paid out over the counter or in the store?

A. Yes sir.

Q. Aside from the large orders that you might place?

A. Yes sir.

Q. Cash transactions?

A. Yes sir.

Q. I'll ask you, Mr. Lee Chong, whether or not the cash that was paid out for those flowers that were sent out to that Mothers' Day dinner appears in here?

A. May I take a look at it?

(Mr. Ulrich hands book to witness)

A. I saw one item, it's May 10th, pay out cut flowers $21.15.

Q. May 10th paid out for cut flowers how much?

A. $21.15.

Q. Now, did you have anything else that you were using flowers for at that time?

A. No.

Q. You had no occasion to decorate your store with flowers yourself, did you?

A. No.

(Testimony of Lee Sau Chong.)

Q. You didn't have any other banquet or any other place that you were sending the twenty dollars worth of flowers to, you didn't deliver flowers to anybody else, then, or did you?

A. No, never deliver to anybody.

Q. Now as to liquor; does this book show the purchase by Lee Chong Co. from time to time of alcoholic liquor?

A. You mean from January 1st? [547]

Q. Yes; anytime, anywhere. I'll just ask you to look in there, just for the purpose of showing what kind of liquor and how you bought liquor; an item there of March 8th, a case of beer for $2.75, does that item appear there?

A. Yes, March 8th, $2.75.

Q. March 21st, a case of beer for $2.15, does that item appear there?

A. Yes sir.

Q. And various other items in there, until we get to some wine on April 12th, is that right?

A. April 12th, yes, two dozen beer, $3.00.

Q. Do you see an item for wine on that same day there?

A. $2.50 for wine.

Q. And wine items on one or two other days there. Now, the nearest liquor that was purchased to May 12th, look at May 10th, "paid for liquor $3.75", do you see that?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Do you have any way of knowing whether that was wine or beer or some other kind of liquor?

A. I don't know.

Q. Those items before that were frequently listed as wine and beer; it might have been wine or beer?

A. What they write down as "beer" is beer; but this liquor is just "paid for liquor $3.75."

Q. You don't know what kind it was, and you have no way of telling?

A. No sir.

Q. On May 12th, that's Mothers' Day itself and on a Sunday, you have another liquor item there, haven't you?

A. Yes sir. [548]

Q. "Paid for liquor, 5 bottles, $9.60", is that right?

A. Yes sir.

Q. You don't know, or do you know what kind of liquor that was?

A. I don't know.

Q. As a matter of fact, what do you get liquor for at the store there?

A. If that's buying liquor or purchasing, all done by Chun Yau Chee himself.

Q. Yes, but what do you use the liquor for?

A. Sometimes we have liquors, some they use for our workmen, beer, like that, and wine.

Q. Wine, beer, and other liquor used for the men around the place, is that right?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Did you ever sell any liquor?

A. No sir.

Q. Never?

A. No sir.

Q. To anybody?

A. Yes sir, never.

Q. Never sold to anybody?

A. Never.

Q. Did you ever have any whiskey or gin bought there at your place?

A. No sir.

Q. If it was hard liquor, what kind of hard liquor did you buy or have about the place?

A. I remember during that time Chun Yau Chee had some Chinese liquor.

Q. What do you call that?

A. Ng Ka Pee.

Q. But can you definitely state that, to the best of your knowledge, there was never purchased by your store or [549] had about your place there any whiskey or gin?

A. Yes sir.

Q. By the way, these little pencil marks through here (indicating), whom do they belong to?

A. That's Captain Deville.

Q. Captain Deville, the gentleman sitting here with counsel?

A. Yes; he ask me if he can take pictures from this book.

Mr. ULRICH: I offer that in evidence.

(Testimony of Lee Sau Chong.)

Mr. MOORE: It wasn't kept by this man.

Mr. ULRICH: We can't prove it; the man who kept the book is not here. Where is Mr. Chun Yau Chee, the man who kept this book?

A. He went back to China.

Q. Do you recognize his writing in Chinese characters?

A. Yes sir.

Mr. ULRICH: I think that's sufficient basis for it.

Mr. MOORE: I have no objections.

Mr. ULRICH: Will it be received, Your Honor?

The COURT: Will it be of any value?

Mr. MOORE: I have no objection.

Mr. ULRICH: I don't think it's of great value, Your Honor, but it simply shows the custom so far as liquor is concerned; I think it has real probative value so far as the flowers are concerned.

The COURT: There being no objection by the Government, it will be admitted.

Mr. ULRICH: I want to show everything I possibly can, Your Honor, that's the idea.

(Marked "Defendants' Exhibit No. 3")

Mr. ULRICH: That's all. [550]

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. What's your business, Mr. Lee Chong?

A. My business?

Q. Yes.

A. I got no business.

(Testimony of Lee Sau Chong.)

Q. You got no business?

A. Yes sir.

Q. How do you make your living?

A. I work for Lee Chong Co.

Q. And you're the person that started that bnsiness, aren't you?

A. Yes sir.

Q. Your correct name is Lee Sau Chong?

A. Yes sir.

Q. And when did you start this Lee Chong Company?

A. 1932.

Q. And when did you sell it to this man Chun Yau Chee?

A. 1933, January 1st.

Q. January 1st, 1933?

A. Yes sir.

Q. What did you sell it to him for?

A. I owe him some money.

Q. You had been right there at the store ever since it started, haven't you, either as owner or manager?

A. I am manager now.

Q. And the only designation or you've only been designated "manager" since Chun Yau Chee took it?

A. Yes sir.

Q. And you have been manager ever since?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. You say that this book here is a record book —indicating Defendants' Exhibit 3—of receipts and sales for cash?

A. Yes sir. [551]

Q. Do you keep any books of the groceries you actually buy, that is, the vegetables?

A. I'm not keep the books.

Q. Well, are they kept there?

A. Chun Yau Chee, he keep all the books.

Q. Well, Chun Yau Chee, as I understand it, sold this place—what was it, the 1st day of May, or the 1st day of January, 1934?

A. You mean, that Chun Yau Chee keep the books?

Q. When did Chun Yau Chee sell this store or transfer it to somebody else?

A. Some time in June, 1934.

Q. You were the manager of this store, weren't you?

A. Yes sir.

Q. Well, did they keep any books of the produce they bought for sale?

A. Yes; Chun Yau Chee keep, himself, that time.

Q. Where are the books?

A. I don't know; he keep, his self.

Q. Chun Yau Chee sold the store and somebody else bought it; didn't he keep books of the products you bought?

A. That's Lee Kam You; he keep his books separate.

(Testimony of Lee Sau Chong.)

Q. He kept it separate?

A. That's belong to Lee Kam You.

Q. All right; that's kept there at the store?

A. Yes sir.

Q. And Mr. Roque, does he keep them?

A. Mr. Monty Roque, he keep sales for merchandise department and for the C. C. C. Camp books.

Q. That's the only books he keeps?

A. Yes sir. [552]

Q. Well, this second purchaser, is he named Lee Tin Yip?

A. Lee Tin Yip.

Q. And he's an uncle of yours, isn't he?

A. Yes sir.

Q. This Chun Yau Chee wanted to go to China, is that right?

A. Yes sir.

Q. And you had him transfer this to your uncle?

A. Not me transfer it to my uncle; Chun Yau Chee sold to my uncle.

Q. Isn't it the fact that you have run this store yourself, though, ever since it was started?

A. Yes sir.

Q. And you said, on this United States Exhibit "B", the only item on this that wasn't delivered is the oysters?

A. Every article is delivered except the oysters; that's the cut flowers.

(Testimony of Lee Sau Chong.)

Q. And you said that when they came down and told you—when you directed the change that billed the eatables for the flowers the only person there was Cunningham?

A. Yes sir.

Q. Mookini wasn't there at all?

A. No.

Q. Isn't it the fact, Lee Chong, that Mookini just about lived in your store while he was this Mess Officer out at the Camp?

A. Live in my store?

Q. He was in your store every single day, practically?

A. He not live in our store.

Q. Well, he was there practically every day, wasn't he?

A. No sir.

Q. How often did you see him in the week?

A. Once in a while. [553]

Q. Once in a while?

A. Yes.

Q. How often would you say, on an average, you'd see him in a week?

A. Can't tell exactly how often, but every once in a while Mr. Mookini come down the store.

Q. Just once in a while?

A. Yes sir.

Q. Did he go down there at lot of times and you set up the drinks and smokes for him?

A. No sir.

(Testimony of Lee Sau Chong.)

Q. Never did that?

A. Never give him drink; if I give him drink it's ice water or ginger ale, whatever he ask for, and give him cigar, like that.

Q. But you furnished ginger ale; what did he do with the ginger ale—just drink it straight?

A. Well, all he ask me is ginger ale and ice water.

Q. Did he use anything with his ginger ale?

A. I didn't see him use anything, only he ask me ginger ale and ice water, and that's all I gave it to him.

Q. And he drank it right there in the office where you were?

A. No.

Q. He took the ginger ale out?

A. He drink in the office, ginger ale, or sometimes ice water.

Q. Isn't it a fact that on a number of occasions he and Cunningham came down there and had drinks that you set up for them?

A. Pardon me?

Q. Many times did't he and Cunningham come down there together and you would buy the drinks for them?

A. No sir, I never did. [554]

Q. Didn't you buy drinks for this man Colman there by setting up—I don't mean that you went out and bought drinks, but you had the ginger ale and you furnished the booze?

A. Only few times Mr. Mookini bring some beer down to the office, and he drink, his self.

Q. He would bring beer and mix it with ginger ale, I suppose, to drink?

A. I don't know what he mix; I didn't see him mix.

Q. Where is this place here (indicating) that it talks about flowers?

A. May 10.

Q. And that is right over this column that has the initials of Mr. Deville?

A. Yes sir.

Q. Is there any Chinese number on any of these pages?

A. No.

Q. Can you tell what page it is?

A. No; that number is right over here; that's "10".

Q. Well, that's the date?

A. Yes sir.

Q. What did you say the amount of those flowers was?

A. $21.15.

Q. Now read us verbatim, that is, exactly what this says.

A. "Paid cut flowers $21.15."

Q. And you say that's the only thing that you wanted flowers for at that particular time, was to take them out to this Camp at Schofield, that's what you wanted these flowers for?

A. Well, during that time Chun Yau Chee purchase.

(Testimony of Lee Sau Chong.)

Q. Yes, but that's what the flowers were for, to take out to the Camp, is that right? [555]

A. Yes sir.

Q. And that's the only thing at that time you wanted flowers for?

A. Yes sir.

Q. Did you purchase these flowers yourself?

A. No.

Q. Have anything to do whatever with purchasing them?

A. No sir.

Q. Did you tell anybody to purchase them?

A. That time it's Mr. Chun Yau Chee do all the purchase.

Q. Did you tell anybody to purchase these flowers?

A. No.

Q. Well, how did they happen to purchase them, then, if you know?

A. Well, Mr. Cunningham tell us to have that flowers only for Mothers' Day; I take his order, I hand it to Mr. Monty, he makes the bill, and he tell whoever was to purchase, like Mr. Chun Yau Chee, he handle that.

Q. Well, then, you did tell somebody to go purchase flowers?

A. Yes sir.

Q. Now, do you remember having a conversation with Mr. Deville on October 27th at about 1:25 p. m.?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. And he was talking to you about these flowers?

A. No; he ask me to have this book, he want to take picture of it at that time.

Q. Well, did he ever ask you about flowers?

A. Yes sir.

Q. Did you point out to him these flowers, or did the Chinese boy that was with him pick those out?

A. Mr. Tom, the Chinese interpreter.

Q. Immigration interpreter? [556]

A. Immigration interpreter.

Q. You never talked to Mr. Deville at any time about these flowers, is that right?

A. I never talk about the flowers to Mr. Deville, you say?

Q. That's what I'm asking you: Did you ever talk to him about these flowers?

A. He ask me about the Mothers' Day bill; I did tell him that cut flowers in the place of oysters.

Q. You told him that?

A. Yes sir.

Q. And just what did you tell him? Give us the words, the best of your recollection of what you told him about flowers at that time.

A. I tell him Mr. Cunningham had an order from Mr. Miles to have that cut flowers put it in as oysters, because the cut flowers is not eatables.

Q. Now, didn't you tell Mr. Deville on that day, when you were discussing these flowers, that

(Testimony of Lee Sau Chong.)

Cunningham and Mookini came to your store and told you that they wanted to get some flowers?

A. No sir.

Q. And didn't they tell you to charge it up as some eatables?

Mr. ULRICH: Just a moment. I would like these questions intelligible. Do I understand you're asking whether they said it separately or in unison?

Mr. MOORE: When the two of them were there.

Mr. ULRICH: They both together obviously couldn't talk at the same time.

Mr. MOORE: And, in the presence of both of these men, didn't one or the other tell you to get these flowers and charge them up as eatables? [557]

A. Only Mr. Cunningham.

Q. Wasn't Mr. Mookini there?

A. No.

Q. And you never told that to Mr. Deville; you never said that the two came down there and in the presence of both of them, that one of these men, that's either Mookini or Cunningham, told you to get these flowers and charge them as eatables?

A. Not Mookini; Mr. Cunningham.

Q. What I'm asking you is this; not whether you said that or whether Mookini or Cunningham said that, I'm asking you whether you told Mr. Deville that while these two men were there one of them told you to get flowers and charge it as eatables?

(Testimony of Lee Sau Chong.)

A. I did not tell Mr. Deville whether Mr. Cunningham or Mookini.

Q. You didn't tell Mr. Deville that?

A. I did not tell him that.

Q. Didn't you tell Mr. Deville that the flowers amounted to $23.75?

A. No sir.

Q. Didn't you tell Mr. Deville that the items of strawberries and oysters made up that item of $23.75, that is, $17.50 for the oysters and $6.25 for the strawberries?

A. No sir. May I explain that, Mr. Moore?

Q. Sure.

A. From that time when I came back from Hilo, Mr. Deville come down the store, once in a while he come down the store, he point me out the picture of May bill and he tell me, he say, "Mr. Lee Chong, did you remember that strawberries [558] was not deliver, or pumpkin not deliver?" I say, "No"; I say, "Captain, you show me that invoice of the May 12th bill, 1934, I told you time to time every article is deliver except the oysters, according to Mr. Cunningham and Mr. Miles order me to change it as oysters on account cut flowers is not eatables."

(Recess—11:00 a. m. to 11:10 a. m.)

Mr. MOORE: Now, when Cunningham asked you to list these as something else, that is, the flowers, you say he told you you would have to list them as food?

(Testimony of Lee Sau Chong.)

A. Mr. Cunningham told me that these cut flowers not eatables, that's all I know; he say Captain Miles was order him to tell me to charge as oysters.

Q. Didn't you think when they told you that they couldn't charge these, that was an illegal charge to make those as flowers?

A. No sir.

Q. You didn't think that at all?

A. He never tell me that.

Q. Well, are you in the habit of listing groceries as something that they are not?

A. Pardon me?

Q. Do you make a habit of listing groceries as building blocks or something that they don't represent?

A. All he call out on his list I mark down on my paper and turn it to Mr. Monty to take care of that and make out the bill.

Q. And you say that Cunningham instructed you to list them as oysters?

A. Ordered by Mr. Miles. [559]

Q. Well, Cunningham is the man that told you, though?

A. Yes sir.

Q. Well, how do you account for the fact, Mr. Lee Chong, that your cash there in the book for flowers is $21.15 and the oysters are only $17.50?

A. Mr. Cunningham ask me, account Mothers' Day bill was a big order, he ask me for donation for

(Testimony of Lee Sau Chong.)

flowers to the Camp, which we did supply that Camp with $17.50 worth of cut flowers, the balance was donation to the Camp, account of Mothers' Day.

Q. That was a personal donation by Lee Chong Company?

A. Yes sir.

Q. Did you talk to Chun Yau Chee about this?

A. Yes sir.

Q. And he told you that would be all right?

A. Yes sir.

Q. And Chun Yau Chee is back in China now?

A. Now, yes.

Q. Now, showing you United States Exhibit "G", this is the exhibit on which the delivery was made on September 1st, isn't it?

A. Yes sir.

Q. And there's no keawe wood, cigarettes or cigars, netting, or sacks, or chairs, or paper cups, or anything like that on there, is there?

A. That's the one Mr. Cunningham tell Mr. Monty to change as vegetables.

Q. You heard Mr. Cunningham tell him that?

A. Yes sir.

Q. And Mr. Mookini wasn't there?

A. No. [560]

Q. Now, didn't you tell Mr. Deville here, during this investigation, that Mookini and Cunningham came in and told you to change these things to eatables, otherwise they couldn't be paid for?

A. Not Mr. Mookini; Mr. Cunningham.

(Testimony of Lee Sau Chong.)

Q. You didn't tell Mr. Deville that Mookini and Cunningham were there?

A. I did not tell to Mr. Deville that Mr. Mookini was in there.

Q. Now, 25 pounds of California yams were not delivered, were they? There's 50 pounds listed; 25 pounds were not delivered, were they?

A. We had papers, memorandum made out whatever is deliver, whatever is charge as vegetables; Mr. Ulrich has it.

Q. I'm asking you, were the whole amount of those 50 pounds of yams delivered?

A. I would like to have that memorandum, then I can tell whatever is not deliver and whatever is deliver; that time it's changed already.

Mr. ULRICH: Do I understand the witness can't testify from his independent recollection and wants to refresh it from some memorandum? I don't imagine he could, very well.

Mr. MOORE: Have you got one that's supposed to be in evidence?

Mr. ULRICH: Here is one (handing document to Mr. Moore).

Mr. MOORE: There's only 25 pounds of yams in that list, isn't there; that's referring to United States Exhibit "H"?

A. Yes sir.

Q. Then the 50 pounds here that's listed as delivered were not delivered; only 25 pounds of it?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. And again reading from Exhibit "G"; the six cases of [561] honey dew melons listed here at $15.00 were not delivered either, were they?

A. What you say?

Q. Six cases of honey dew melons?

A. (After inspecting document): No.

Q. Nor 300 pounds of pumpkin?

A. No.

Q. Nor 10 pounds of dried mushrooms?

A. No.

Q. Nor 15 gallons of mayonnaise?

A. No.

Q. And you knew when these items were delivered, that is, the items listed on Exhibit "G", that this statement was not correct, didn't you; that's the one with the pumpkin, the honey dew melons, the mushrooms, and the mayonnaise on it?

A. That's what Mr. Cunningham ask us to change.

Q. Yes, but you knew when these goods were delivered that this statement about those goods was not correct as it did not truly list the articles actually delivered?

A. These goods on September 1st, we make out the list, one to us and one for the Camp, whatever they take the goods from our store, and they check it off.

Mr. MOORE: I'll ask that the answer be stricken as being not responsive.

(No ruling.)

(Testimony of Lee Sau Chong.)

Q. What I am asking you is this: You knew at the time, that is, on September 1st, that this bill, which is United States Exhibit "G", was not correct as setting forth what was actually delivered?

A. Well, this bill is made out and totaled by Mr. Cunningham and Mr. Monty. [562]

Q. I understand; but you knew at that time that this bill did not correctly list the articles delivered, didn't you?

A. I don't know; that's after they change.

Q. After they changed—this is the change here (indicating)——

Mr. ULRICH: I think the witness probably doesn't understand the question.

Mr. MOORE: You had already sent back—you said that you knew the changes had been made?

A. These are changes made around October 2nd or 3rd that Captain Miles asked to change.

Q. At the time these goods were delivered, as listed upon United States Exhibit "G", you knew that the items of 25 pounds of California yams, 6 cases of honey dew melons, 300 pounds of pumpkin, 10 pounds of dried mushrooms, and 15 gallons of mayonnaise, covered those items for the luau such as keawe wood in that list making up $72.50; you knew that, didn't you?

A. These changes I don't know; between Cunningham and Monty.

Q. You knew that this list did not correctly state what was actually delivered, didn't you?

(Testimony of Lee Sau Chong.)

A. This invoice, all I know the changed total Mr. Cunningham tell Mr. Monty to change that; I didn't take look at it before I deliver this bill to the Camp.

Q. Then it's correct, that before this bill was made out, according to your testimony, Mr. Cunningham in your presence stated that these items of keawe wood and all that stuff, making $72.50, was to be charged as something else?

A. At that time I'm not in; this bill I delivér to Camp after one or two day, in September; Monty make out this bill and I deliver to the Camp. [563]

Q. You delivered this bill to the Camp?

A. Yes; accountant that time was busy.

Q. Didn't you tell us on direct examination that, on this September 1st bill, Cunningham came in to the Lee Chong Company down here at the Fish Market and told you and Monty that these luau items, which amounted to $72.50 and are listed on United States Exhibit "J", were to be charged as eatables or foodstuffs?

A. Mr. Cunningham give us orders——

Q. Did you state that on direct examination, or didn't you?

Mr. ULRICH: The witness has a right to explain his answer, if the Court please.

Mr. MOORE: It's an answer that called for "yes" or "no", and there don't have to be any explanation about it.

Mr. ULRICH: We all know what he testified to about on direct examination; whether you have

(Testimony of Lee Sau Chong.)

given him a correct paraphrase I don't know myself. If he wants, let him state what is the fact and restate the subject matter. I couldn't tell you exactly what he said on direct examination even now. I submit he has a right to give the substance of what he wants to say, whatever really happened.

Mr. MOORE: I submit, may it please the Court, the cross-examination is proper and the manner of its conducting should be in the discretion of the plaintiff at this time.

The COURT: What we're concerned about is getting the actual facts.

Mr. MOORE: Yes, Your Honor.

The COURT: The Court will permit the witness to explain what the facts were. [564]

Mr. MOORE: Very well.

Q. Will you tell us at this time how these items listed on United States Exhibit "J" were covered on the voucher that was given at the time of the delivery of the goods?

A. This September 1st statement was change somewhere around the October 4th or 5th; Mr. Miles come in and have that change as "Canteen", $72.50

Q. Originally this amount, as shown you in Exhibit "J", for $72.50, together with the amount listed on United States Exhibit "H" in the sum of $454.10—just look at the totals for a minute and maybe you can follow this—amount to five twenty six, the amount of this bill which is United States Exhibit "G"——

The COURT: Is that $5.26, or $526.00?

(Testimony of Lee Sau Chong.)

Q. $526.60; these two add up to this, don't they?

A. Yes sir.

Q. Now, what I am trying to have you tell me is how you happened to put the items in this bill, which is United States Exhibit "J", as something else in Exhibit "G"?

A. I remember this September 1st bill $526.60; after Mr. Monty make this bill, I was take it out to the Camp around October 4th or 5th—no, in September, one or two days later.

Q. Did Mr. Cunningham tell you to list those items in United States Exhibit "J", which are the keawe wood, and so forth, that make up $72.50, as eatables?

A. Not Cunningham; that's Mr. Miles.

Q. What?

A. Mr. Miles tell Monty to make out that. [565]

Mr. ULRICH: I think the witness is being confused, if Your Honor please, by reason of the fact that his attention is being constantly directed to an exhibit which was not in existence at the time the original bill was presented: I think if you would direct your question—maybe an interpreter would be better—but if you'll directed his attention to the first time anybody placed an order for the luau bill, he'll not have in mind this subsequent bill, and the confusion will be removed.

Mr. MOORE: As I recall, when you were questioning him you had the same bill and showed it to him.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: Oh yes, but not in connection with the first exhibit; it wasn't in existence at the time they first made out the bill.

Mr. MOORE: When Mr. Cunningham, according to your testimony, went down to your store, about September 1st, he had a list with him, is that right?

A. Yes sir.

Q. And you sat down there with pencil and paper and he called the items off this list?

A. Yes sir.

Q. And you wrote these items down?

A. Yes sir.

Q. Did the items that he called off include keawe wood——

A. Yes sir.

Q. And chicken wire?

A. Yes sir.

Q. And empty bags?

A. Yes sir.

Q. Chairs?

A. Yes sir.

Q. Paper plates, napkins, cups?

A. Yes sir.

Q. Bowls, spoons?

A. Yes sir.

Q. Cigars?

A. Yes sir. [566]

Q. Cigarettes, Hawaiian pudding, and flower leis?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Now, was anything said by Cunningham at that time as to how those articles were to be charged?

A. Nothing said to be changed, to be charged at that time.

Q. Nothing said at that time?

A. Not changed.

Q. Now let's get this correct. At the time the order was given by Mr. Cunningham for September 1st, he gave you a list of groceries, and in addition to that he gave you this list which is included in this exhibit, which is Exhibit "J", is that right?

A. Yes sir.

Q. And nothing was said as to how they were to be billed?

A. Let me explain to you, Mr. Moore. He give this September 1st order around August 30th, and I take the order from his list; he call to me, I mark it down on piece of paper and I turn over to Mr. Monty to place the order and price and make out the bill; just this change, that's between Mr. Cunningham and Monty—I was not in.

Q. In other words, you don't know how they happened to put these items of 25 pounds of yams, 6 cases honey dew melons, 300 pounds pumpkin, 10 pounds dried mushrooms, and 15 gallons mayonnaise, on this bill; you don't know how they happened to do that?

A. Until later.

Q. That's referring to United States Exhibit "G". When did you first find out about it?

(Testimony of Lee Sau Chong.)

A. Around October 2nd or 3rd Mr. Miles come down and ask for separate that statement. [567]

Q. You don't carry keawe wood, do you?

A. No sir.

Q. You don't carry chicken wire, do you?

A. No sir.

Q. You don't carry chairs, do you?

A. No.

Q. You don't carry flower leis, do you?

A. No.

Q. You don't carry Hawaiian pudding?

A. No.

Q. Cigars or cigarettes?

A. We carry that.

Q. You do carry that?

A. Yes. Let me explain——

Q. You don't carry these paper cups or empty bags?

A. We had empty bags.

Q. That's when you get onions and potatoes and stuff like that, you save the bags out and do have those?

A. No; we buy those empty bags.

Q. What did you want to explain?

A. The keawe wood we was buying that time; myself and Mr. Miles' cousin buy that from the Depot over there.

Q. That's the Oahu Railway Depot?

A. Yes sir; I got receipt for that.

(Testimony of Lee Sau Chong.)

Q. You went out and bought that yourself, personally?

A. I go out with Mr. Miles' cousin; whatever he say, I buy from the Depot over there, and I pay him cash for that. And those pudding, Mrs. Miles order the pudding right in the Oahu Market over there.

Q. And charged it to you?

A. Charge to me, and I pay for it. And the chicken net wire, sometimes Mr. Miles personally go with me and buy from Japanese store.

Q. And you paid for that?

A. Yes sir.

Q. How about these chairs? [568]

A. These chairs, rented those chairs from a Chinese on River Street; he is put up Chinese parties for somebody have party like that; we rent it from him.

Q. You rented them?

A. Yes.

Q. You paid the rent for the chairs?

A. Yes sir.

Q. How about these paper plates and napkins, and so forth?

A. All come from Honolulu Paper Company.

Q. And you bought that?

A. They sent it to us, for the C. C. C. Camp truck take it, two or three times.

Q. You paid for those?

A. We pay for those; we charge just the same.

Q. You mean, you charged the C. C. C. Camp the same amount that you paid for them?

A. Yes.

(Testimony of Lee Sau Chong.)

Q. Did you deliver this stuff?

A. No; the C. C. C. Camp truck come and get it.

Q. Who came in on the C. C. C. truck to get it; Mr. Mookini wasn't there, was he?

A. Mr. Cunningham; and that morning the Camp truck driver come and get it.

Q. Mr. Mookini wasn't there?

A. Mr. Mookini he come in that morning too.

Q. On the truck?

A. On the truck.

Q. And on this Exhibit "G", which is your receipt for the store, Mr. Cunningham signed that?

A. I deliver these later, one or two days, account busy; Monty make out these and he had list all ready whatever he get checked from the store, and he check over and he take it up to Mr. Miles. [569]

Q. In other words, when these goods were actually taken out of the store there was no bill made out for it?

A. At that time didn't make no bill.

Q. And Mr. Cunningham and Mr. Mookini were there at the time they were delivered?

A. That morning the C. C. C. Camp truck come and get it.

Q. And Mr. Mookini and Mr. Cunningham were on the truck?

A. Mr. Cunningham on the truck with his driver.

Q. Where was Mr. Mookini?

A. I don't remember sure Mr. Mookini in or not.

Q. A little while ago you said he was there; was he, or wasn't he?

(Testimony of Lee Sau Chong.)

A. The C. C. C. Camp truck with the driver; Mr. Cunningham was there.

Q. But, to the best of your recollection, Mr. Mookini was not there?

A. I don't remember sure he's there or not.

Q. Didn't you know that Mr. Mookini was the Mess Officer out there?

A. All I know he's officer of the Camp.

Q. Well, didn't you know he had charge of the buying?

A. I don't know he's in charge of the buying.

Q. Didn't he ever tell you that he was the Mess Officer and that he was the one that bought the food?

A. He didn't tell me that.

Q. Never did?

A. No, he never tell me he's doing the buying.

Q. Whom did you think was the buyer—Cunningham?

A. Mr. Miles and Cunningham. [570]

Q. Didn't Mookini ever come down to your store?

A. When?

Q. Any time during this period?

A. Once in a while Mr. Mookini come down.

Q. Didn't he ever give you any orders—Mookini?

A. Orders, most of them, Mr. Cunningham.

Q. Didn't Mookini ever give you any orders for goods to go to the C. C. C. Camp?

A. By telephone?

(Testimony of Lee Sau Chong.)

Q. By telephone, or any way?

A. The first time around April, 1934; since that time I see him, sometimes he give us order by telephone.

Q. That is, Mookini?

A. Yes sir.

Q. Did he ever come personally down to the store to give you an order?

A. I remember only sometimes he come down and give order.

Q. Well, he gave orders, then, at times, too?

A. Yes; with Mr. Cunningham together.

Q. What's that?

A. When he come down with Mr. Cunningham together.

Q. When the two of them came together, Mookini gave the orders, is that it?

A. If he come together, Mr. Cunningham did give orders.

Q. Well then, the only times he did give orders to you was when he came down alone or in the absence of Mr. Cunningham?

A. He didn't give me any orders by his self.

Q. Well now, here a moment ago you said that when they were together Mr. Cunningham gave the order, and now you say that he never gave you an order by himself?

Mr. ULRICH: No, he didn't say anything of the kind. [571]

Mr. MOORE: He said he did give him an order once in a while when he was down by himself.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: He said, when Cunningham was there—I don't see any discrepancy—Cunningham would give the order.

Mr. MOORE: Did Mookini come down any time by himself and give you an order for food out there?

A. No.

Q. Never did?

A. Never.

Q. And, each time when he came with Cunningham, Cunningham gave the orders?

A. Yes sir.

Q. Just when did Mookini give these orders?

A. I cannot remember exactly the days, only sometimes, maybe it was order by phone, that's what I remember.

Q. But Mookini never gave you an order personally at the store, is that right?

A. Yes sir.

Q. And all your dealings with Mookini with reference to the Civilian Conservation Camp for food was over the telephone?

A. I remember that.

Q. That is, the only business that you ever did with him in that connection was over the telephone, is that right?

A. Yes sir.

The COURT: Can you finish by noon, Mr. Moore?

Mr. MOORE: No, Your Honor, I cannot.

The COURT: Then the Court will adjourn at this time. Gentlemen of the jury, you will be ex-

(Testimony of Lee Sau Chong.)

cused until nine o'clock tomorrow morning. Remember the admonition given you about discussing this case with anyone or permitting anyone else to talk to you about it; also, refrain from [572] making up your minds until you've heard all the testimony and the arguments of counsel. The jury will be excused.

(Adjourned—11:42 a. m.)

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Tuesday, May 21st, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll also so stipulate.

The COURT: Let the stipulation be entered.

LEE SAU CHONG resumed the witness stand, and under continued Cross-Examination by Willson C. Moore, Esq., testified further as follows:

Q. On this May 12th voucher, referring now to United States Exhibit "C", you're sure this 400 pounds of pumpkin was delivered? [574]

Yes sir.

(Testimony of Lee Sau Chong.)

Q. And the only item on there that wasn't delivered is the oysters?

A. Yes sir.

Q. You see those initials down at the bottom of that document?

Yes sir.

Q. Do you know whose those are?

A. You mean these in here (indicating)?

Q. That's it.

A. Mr. Cunningham.

Q. And this appears to be a receipt for some goods your Company delivered to the Civilian Conservation Camp, is it not?

Mr. ULRICH: I think I might as well just get a ruling on this, if Your Honor please, at this time. Apparently now counsel is commencing to examine him on vouchers covering other and different transactions. What date is that?

Mr. MOORE: May 1st, May 16th, and May 29th.

Mr. ULRICH: Now I suggest to the Court the objection that this can go on indefinitely; we've already, I think, occupied more time than any of us anticipated in the trial of this case, and if this witness can now be examined on all of his transactions with the Camp or on three or four, even, of those, and taken through the various items, there is no limit to the extent that the examination may reach; and I submit that what happened on these other occasions is not relevant and material. For what it's

(Testimony of Lee Sau Chong.)

worth at this time, I submit the objection, if Your Honor please, that it's irrelevant, incompetent, and immaterial what he delivered on May 1st, and that any cross-examination as to matter which had no part in the direct examination at all, aside from being improper cross-examination, deals with [575] incompetent, irrelevant, and immaterial matter.

The COURT: What is the purpose, Mr. Moore?

Mr. MOORE: The purpose is this, may it please the Court; it's to show that during the month of May about 950 pounds of pumpkin was delivered out there, and he claims that this 400 pound item was delivered on the 12th, and it shows that four days later there was 200 pounds more, showing it is positively ridiculous that any outfit could use half a ton of pumpkin.

Mr. ULRICH: (Argument).

The COURT: Is it claimed that these items are false and fictitious?

Mr. MOORE: No, Your Honor. It is claimed by the Government that the item of 400 pounds of pumpkin upon the voucher of May 12th is false and fictitious; and there are besides that four other purchases of pumpkin in that month, one of them being within the period of four days of the 12th showing that first order and the last order of about 150 to 200 pounds apiece, and here within this four days is about six or seven hundred pounds. It goes to show, may it please the Court, that that item of 400 pounds of pumpkin as alleged by the Government on May 12th is false.

(Testimony of Lee Sau Chong.)

Mr. ULRICH: (Argument).

Mr. MOORE: May it please the Court, this is one of the defendants; the scope of the cross-examination with reference to a defendant is far different from the scope of an examination of a witness; and when the thing directly bears upon a certain thing which is the very essence of this offense, we submit it is proper, relevant, and material. [576]

The COURT: In the view of the Court, it would only be so if it touched the credibility of this witness.

Mr. MOORE: Well, of course it would go to his credibility in addition to that.

Mr. ULRICH: (Argument).

The COURT: The objection is sustained. "Peter, Peter, pumpkin eater", may have been out there.

Mr. MOORE: You told me yesterday that on this September 1st bill, when they came in and ordered these goods for the luau, that Mookini was not there, is that correct?

A. Mr. Cunningham he give me the order on that September 1st.

Q. You told me, did you not, though, that Mookini was not there on September 1st when that order was given?

A. Mookini not there.

Q. Mookini was not there; you're sure about that?

A. Yes sir.

Q. You know this man McGregor, don't you?

A. Yes sir.

(Testimony of Lee Sau Chong.)

Q. Now, don't you remember a conversation where you were present, Mookini was present, Cunningham was present, and McGregor was present, and McGregor was telling Mookini and Cunningham the quantities they needed for a luau?

A. What do you mean—conversation with Mookini?

Q. A conversation at your store, the Lee Chong Co. down there, where these four men were there, and McGregor was telling them that they had too much of this and not enough of this for the luau that they were going to give?

A. I remember that September 1st; around August 30th Mr. Cunningham place the order for September 1st. I misunderstand you yesterday; that time Mr. Cunningham place [577] that order he had a list in his hand, and he call out that articles to me, and at the same time Mr. Monty and myself, and Mr. Cunningham in there was giving order to me, and I mark down on the paper, and I turn it over to Monty; at the same time he told me and Monty to have change those chicken net wire and keawe wood and cigarettes and cigars for $72.50.

Q. Your memory is better on that this morning than it was yesterday, is that right?

A. I was trying to remember yesterday afternoon, and realize that change when Monty and myself and Cunningham were there.

(Testimony of Lee Sau Chong.)

Q. Did you talk to anybody about that particular thing since yesterday when you were on the stand?

A. Couldn't understand you.

Q. Did you talk this thing over that you said you made a mistake yesterday, have you talked about that thing since you left the stand yesterday, with anybody?

A. No; I try remember myself; I'm not talking to anybody.

Q. You didn't say a word to Roque?

A. No.

Q. Or you didn't say a word to Mookini?

A. Never talk to him.

Q. How about this conversation I have just brought to your attention, when this fellow McGregor was there; what's your recollection on that now?

A. What time that?

Q. When this luau order was placed.

Mr. ULRICH: Now I object to the question; apparently he's talking about a different conversation. The witness has already testified that when the order was placed there was nobody there but Cunningham and he and his bookkeeper. Now he's talking about another time when he's suggesting [578] to the witness there were quite a number of people there, McGregor, Mookini, and the witness, and the bookkeeper, and so forth. I want the ques-

(Testimony of Lee Sau Chong.)

tion distinct, because the witness does have some difficulty understanding; he's Chinese; he speaks English for all reasonable purposes; but I think we should perhaps be a little more insistent than in an ordinary case that the questions be definite.

The COURT: Lee Chong, if you don't understand the question, say so.

A. Yes sir.

Mr. ULRICH: I ask that this witness be directed to a definite time when certain definite people were present, and if he recalls it, very well; but don't confuse it with the time when the order was placed, as he's already testified to that and cited a different set of people.

Mr. MOORE: Did you ever have a conversation or were you ever present at any conversation just prior to this delivery of the luau order, that is, a day, or two or three days, where McGregor, yourself, Mookini, and Cunningham were present talking about the items necessary to give a luau?

A. In the September 1st order, you mean?

Q. Just prior to the time, yes.

A. Mr. McGregor not there; only Mr. Cunningham and Monty and myself; it was around August 30th he place that order; September 1st the C. C. C. Camp truck come in get the goods.

Q. Then you deny that McGregor and Mookini and Cunningham were ever present in your store having a conversation about these luau items for the September 1st bill?

(Testimony of Lee Sau Chong.)

Mr. ULRICH: Let me ask you that that be directed to before [579] September 1st, or at some later time.

Mr. MOORE: Before September 1st.

A. I remember that Mr. Cunningham and myself and Monty were taking his order around August 30th.

*Q. That isn't the question I asked you. I asked you whether or not you deny that a conversation with reference to these luau items that were delivered on September 1st was had at your store prior to their delivery, in which Mookini, Cunningham, McGregor, and yourself, were present; is that true, or isn't it?

A. That I don't remember.

Q. Will you deny that that took place?

A. I don't understand "deny".

Q. Will you say that it did not take place?

Mr. ULRICH: If Your Honor please, I submit that question as asked—very often we have the frame of mind, all of us, where we can't say definitely whether a certain conversation took place at a certain time with a certain group of people. These people have been in various conversations at various times; the witness says he can't say definitely whether there was a group together before that time, and I submit his answer should be taken. He said he would not deny or would not affirm.

Mr. MOORE: He said no such thing.

Mr. ULRICH: I understood him to so testify.

(Testimony of Lee Sau Chong.)

Mr. MOORE: He didn't say he wouldn't deny or wouldn't affirm. He's very specific as to Mr. Cunningham, but with reference to anyone else with reference to this particular order his memory, for some reason, has failed him. [580]

Mr. ULRICH: Oh no; that's a very wrong statement.

Mr. MOORE: We're entitled to have him either admit or deny.

The COURT: The Court understood him to say he didn't understand the question; apparently the word "deny" bothered him, that's the impression the Court got. Call the interpreter and try to have him help you, Mr. Moore.

(Reported reads question, marked *, page 350) [Printed Record page 603] (Interpreted)

A. (Through Chinese Interpreter): I cannot remember correctly.

Q. (Through Chinese Interpreter): Would you deny that that took place?

A. I cannot remember whether there was such a conversation or not.

Q. But you do remember distinctly that Cunningham came in there all by himself and gave you this order and told you to charge the wood, the wire, the bags, the chairs, the paper cups, the leis, the cigars and cigarettes, as eatables?

A. Yes, I did.

(Testimony of Lee Sau Chong.)

Q. What makes your memory so good on that?

A. Well, it was my duty to remember those orders.

Q. And you don't remember telling Mr. Deville here, during the month of October, that when that order for the September 1st bill was given to you, Cunningham and Mookini were both there?

A. I told Mr. Deville that Cunningham was the one that came in to give the order.

Q. Will you deny that you told Deville that both Mookini and Cunningham were there at that time?

A. Only Cunningham was there, not Mookini.

Mr. MOORE: May it please the Court, I'll ask that the answer be stricken and the witness be instructed to answer the question. [581]

The COURT: Explain to him, Mr. Interpreter, that he's not now being asked who was there, but what he told Mr. Deville about it.

A. I deny that.

Q. You're absolutely sure that that wasn't so?

A. Yes.

Q. But you're not sure about this conversation that I spoke of when McGregor was there?

A. What day was it?

Q. Oh, within three or four days of September 1st.

A. I cannot remember.

Q. You've run a store quite a while, haven't you?

A. Between three and four years.

(Testimony of Lee Sau Chong.)

Q. And the usual thing with Chinese is not to make their entries the day following in which the actual transactions took place?

A. No; we keep our books every day.

Q. On the actual day that the transaction took place?

A. It ought to be done that way, but I'm not the bookkeeper.

Q. You can't buy liquor on Sunday, can you; I mean, in bottles or jugs?

A. Is it bottles?

Q. Bottles; from a liquor store?

A. I hardly buy any liquor; I do not know whether it can be purchased or not.

Q. You say Mookini didn't know anything about these changed vouchers, is that what I understand your testimony to be?

A. Which vouchers that were changed?

Q. Well, these various vouchers; that is, you say, when the [582] orders were given to take and list something other than what it truly was, that Mookini knew nothing of those or had nothing to do with the doing of those, but Cunningham always did that and Mookini never did that?

A. The change was made from Cunningham through the orders of Miles.

Q. You never heard Miles give the orders, did you?

A. When?

(Testimony of Lee Sau Chong.)

Q. Well, you say that Cunningham had them changed through the orders of Miles; did you hear Miles give Cunningham these orders to have them changed?

A. On May 12th, when I made delivery of the goods to the Camp and Captain Miles received the invoice, he asked Cunningham whether he did order any oysters or not; Cunningham in reply said that it was a mistake because it should be the flowers that were to be used on Mothers' Day;——

Mr. MOORE: I think he's correcting the Interpreter; let's have him talk in English; we'll get along faster; then we can have the Interpreter stand by.

INTERPRETER: The word "mistake" should be deleted from the answer.

Mr. MOORE: Speak in English, then we'll get along faster.

A. (In English): When I deliver May 12th I handed that bills to Mr. Miles; he's in the kitchen there with Cunningham; Mr. Miles reads that over on our invoice, and he call Mr. Cunningham; he say, "Johnny, you buy any oysters from Mr. Lee Chong?" He says, "Why no," he says, "do you remember you told me to buy that cut flowers for Mothers' Day, you said to put it as oysters." He say, [583] "Oh yes; if you check it over and everything all right, it's O. K., and release Lee Chong and let him go back to the store." Then——

(Testimony of Lee Sau Chong.)

Q. I think you testified before that Miles then told you to change it, or something like that, later on?

A. Mr. Cunningham always come in to place the order; it's through Mr. Miles' order.

Q. Here (indicating) is the changed voucher, then, isn't it; referring to United States Exhibit "D"; that's the changed one, isn't it?

A. Yes.

Q. Whose signature is that down at the bottom?

A. That's Mr. Mookini.

Q. Mr. Cunningham's signature doesn't appear on there, does it?

A. He had the invoice——

Q. Does Mr. Cunningham's signature appear on there?

A. No.

Q. Does Mr. Miles'?

A. No.

Q. Showing you the United States Exhibit "C", which is also a May 12th voucher; does Mr. Cunningham's signature appear on there—and this has oysters on it, too; whose signature appears on there?

A. Mr. Mookini.

Q. Mr. Miles' doesn't appear on there?

A. No.

Q. You know Mr. Gibson used to be out there at the Civilian Conservation Camp?

A. I see him in the Camp.

(Testimony of Lee Sau Chong.)

Q. You've seen him down at your store too, haven't you?

A. He come down our store a couple of times.

[584]

Q. And you set up the drinks for him and Mookini, didn't you?

A. I never set up any drinks wtih them.

Q. You never did, you're positive about that?

A. Never set any drinks with them; they drink their own booze.

Q. You're sure that you didn't do it, though, you didn't furnish the liquor?

A. I sure I didn't furnish the liquor.

Q. And you're just as sure of that as of any other testimony you've given here?

A. I couldn't understand you, Mr. Moore.

Q. You're just as sure of that statement as anything else you've said in this courtroom?

A. I'll have that interpreted.

Mr. MOORE: All right.

(Question repeated through Chinese Interpreter.)

A. If I did say that they were there, yes, they were there.

Q. What I am asking you is this: Are you just as sure of that statement that you made—that you never furnished liquor to any of these men in your store—is that statement as true as any other statement you've made in this case?

Mr. ULRICH: I suggest he doesn't know anything could be more true than true.

A. Yes.

(Testimony of Lee Sau Chong.)

Q. (In English): Wasn't there an occasion down there when this man Colman, who was the Camp adjutant—do you know Mr. Colman?

A. I know Mr. Colman.

Q. Didn't he stop at your store, too?

A. He come down couple of times.

Q. And you set up the drinks for him and Mookini? [585]

A. I never set any drinks with him and Mr. Mookini; they bring their drinks to our office.

Mr. MOORE: That's all.

Redirect Examination.

By BARRY S. ULRICH, Esq.

Q. In other words, Mr. Lee Chong, when there was any drinking done down there by any of these men, they brought their own liquor, and the most you did was to give them ginger ale and ice water, is that right?

A. Yes sir.

Mr. ULRICH: That's all.

(Recess—9:42 to 9:50 a. m.)

MONTY ROQUE

was duly called and sworn as a witness for the Defendants, and testified as follows:

Direct Examination

By BARRY S. ULRICH, Esq.

Q. Will you state your name, please?

(Testimony of Monty Roque.)

Q. What is your business or occupation, Mr. Roque?

A. Clerk in the store.

Q. In what store?

A. Lee Chong Co.

Q. How long have you been clerk in Lee Chong Co.?

A. Ever since it was opened in 1932 in July.

Q. And what have been your duties as clerk, what do you do?

A. Well, at times I go to the ships and solicit business.

Q. Well, you have been variously referred to, in testimony which has heretofore been given, as "assistant manager" and, I believe, on one occasion as "bookkeeper". [586]

Q. (continued): Did you have anything to do with keeping books?

A. As to being assistant manager, I never was assistant manager, but keeping books.

Q. I think it's been said that you signed some papers as "assistant manager" some time when Mr. Lee Chong was not here: do you recall doing that?

A. I don't remember. I was given to be in charge of the store when Mr. Lee Chong made a trip to Hilo sometime last year.

Q. Mr. Deville, the United States detective here, I think said that you had signed some papers that he had seen, as "assistant manager"; he came to see you when Mr. Lee Chong was in Hilo one time?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Do you remember signing any papers for him and calling yourself "assistant manager"?

A. Never.

Q. You don't recall?

A. I don't recall that.

Q. Go ahead; just what were your duties; did you have anything to do with the books?

A. Well, the only books I ever take care of in the store is the books for the C. C. C. Camp and of the ships.

Q. Books for the ships and the Camp?

A. Record of sales.

Q. For the C. C. C. Camp?

A. Yes sir.

Q. Do you know a Mr. Cunningham who was connected with the C. C. C. Camp? [587]

A. I do, sir.

Q. Do you know Captain Miles, at one time the Director of the C. C. C. Camp?

A. Yes sir.

Q. Do you know Mr. Mookini, one of the defendants here?

A. Yes sir.

Q. And you're employed by the Company of which Mr. Lee Chong is the manager, is that right?

A. Yes sir.

Q. Now, there was an occasion on which certain goods were ordered from Lee Chong Company for a Mothers' Day dinner at the Camp; do you recall

(Testimony of Monty Roque.)

anything having to do with the taking of that order at your store there, that is, for the Mothers' Day order?

A. Yes sir.

Q. Were you there when anyone placed that order for the Camp?

A. Yes, I was there.

Q. Who did give the order or place it with Lee Chong Company?

A. As far as I can remember, it was Mr. Cunningham had a list in his hand, giving to Mr. Lee Chong a list of the goods that they needed for this occasion.

Q. In other words, when the order was placed there was present yourself, Mr. Lee Chong, and Mr. Cunningham?

A. And Mr. Cunningham, yes sir.

Q. Is that right?

A. Exactly, sir.

Q. Anyone else present?

A. No.

Q. No one else?

A. No.

Q. What happened then?

A. Well, after Mr. Cunningham had given the items that he wanted, to Mr. Lee Chong, Mr. Lee Chong handed it to me—the list. [588]

Q. Anything said about oysters, or the item of oysters on the list there?

(Testimony of Monty Roque.)

A. Well, the oysters was discussed at the same time to be charged in place of the flowers.

Q. Well, who if anyone said anything about charging the cut flowers as oysters?

A. Mr. Cunningham, sir.

Q. What did he say, as nearly as you can recall?

A. Well, he said this way, that, send them some flowers—I couldn't remember how many dozen he mentioned, but he said it could not be charged as flowers, and so Mr. Lee Chong told him, "Well, why not?" He said, "Well, charge it as oysters, because oysters is eatable"; and that's what Mr. Miles wanted to be done.

Q. And that's all that was said about the flowers?

A. That's all about the flowers, so far as I can remember.

Q. Did you later make out the bill for the goods that were sent out on that Mothers' Day order?

A. Yes sir. Mr. Lee Chong went in the Camp with the driver to deliver the goods; when he came back——

Q. But, just before he went out, before the goods were taken out to the Camp, did you prepare the invoice that was to go out with the goods?

A. Yes sir, I did.

Mr. MOORE: Just a minute, Mr. Ulrich; I don't like to interrupt or to curtail in any respect, but I do object to this series, one after another, of leading questions; there's been about four or five in a row, and I certainly object to them. [589]

(Testimony of Monty Roque.)

Mr. ULRICH: I don't think that this is an objectionable question and leading, "Did you prepare the bill?" Of course, we might say, "Who prepared the bill?"

A. I prepared the bill.

Mr. ULRICH: I'll submit, Your Honor, the question "Who prepared the bill", that would not be objectionable technically.

The COURT: The question may be answered. The witness has already stated that he prepared it.

Mr. ULRICH: That he prepared it, yes.

Q. Was that one of your duties, to prepare these bills regularly?

A. Yes sir, regularly.

Q. Not only for the Camp, but for the ships?

A. For the ships' bills also.

Q. I show you the United States Exhibits "B" and "C", which it has been testified were the bills that went out with that load. I ask you to state whether or not you prepared—that is, typed out and prepared those two bills?

A. Yes sir, this is the bill that went with the goods in the Camp.

Q. That's the bill that went with the goods?

A. Yes sir.

Q. And how many copies went out?

A. The original and one copy?

A. Yes sir.

Q. Who took them out, did you say?

A. Mr. Lee Chong went with the driver at that time.

(Testimony of Monty Roque.)

Q. Calling your attention to the fact that the item "oysters" appears on that list there; I'll ask you under what [590] circumstances you put that "oysters" down there instead of something else?

A. Well, that's the thing that I already said, that it was understood that this should be charged as oysters instead of flowers before the goods went in.

Q. Did you check over these goods as they were put on to the truck to be sent out to the Camp?

A. The driver did, sir.

Q. The driver did?

A. Yes sir.

Q. You did not?

A. I did not.

Q. After having given these bills to Mr. Lee Chong to take out with the order of goods, when did you next see either one of these bills, that is, the original or the carbon copy?

A. Well, when Mr. Lee Chong come back from the Camp he hand me this bill here (indicating).

Q. Which one?

A. This original bill here.

Q. Referring to Government's Exhibit "B"?

A. Yes sir.

Q. When he brought that bill back from the Camp did it have on those initials "J. E. C."?

A. Yes sir.

Q. Can you testify to those as the initials of anyone?

(Testimony of Monty Roque.)

A. Well, that's Mr. Cunningham's initials.

Q. Those were on this bill when that came back to you?

A. Yes sir.

Q. When that came back there were these lines on there?

A. No, those lines weren't on there, but those X's were on there.

Q. Those little x's were on there?

A. Yes sir.

Q. When did you discuss or talk to anyone about this bill, [591] being Exhibit "B", after you got it?

A. Well, when Mr. Lee Chong brought this list back he told me that there is——

Mr. MOORE: I object to Mr. Lee Chong's statement as a self-serving declaration, Your Honor.

Mr. ULRICH: Well, all right. I think it would be more understandable if we had it; but don't tell what Mr. Lee Chong told you when he came back.

Q. Did you have any talk with anyone other than Mr. Lee Chong about this bill at a later time?

A. Naturally; when Mr. Cunningham come down it was prearranged——

Q. When did Mr. Cunningham come down?

A. (continuing): to change all these items which he checked to be changed into vegetables.

Q. When Mr. Cunningham—he came back, I understand, after you had gotten this bill?

A. Yes sir.

(Testimony of Monty Roque.)

Q. How long afterwards?

A. I believe, next day; I couldn't say whether on the same day.

Q. Well, a day or so later?

A. Yes sir.

Q. Who was there when Mr. Cunningham came back and asked you to change some of those items to vegetables?

A. There was nobody else there.

Q. Just you and Mr. Cunningham.

A. Just me and Mr. Cunningham.

Q. What changes—I show you this Exhibit "B", and ask you to state what changes he had you make?

A. Well, he told me prepare all these changes into vegetables.

Q. I call your attention to these little crosses opposite [592] the places where lines have been drawn through the items, and ask you if he said anything about those crosses there at that time?

A. Those crosses?

Q. Yes.

A. Those crosses, that's what he mean all those things to be changed into vegetables.

Q. And who had put those vegetables on there?

A. Just these crosses, he did.

Q. Who did?

A. He did.

Mr. MOORE: Who did?

A. Mr. Cunningham——

Mr. MOORE: I object to that, may it please the Court, and ask that the answer be stricken

(Testimony of Monty Roque.)

There's no testimony here that he saw him put on there, or anything of the kind.

The COURT: That's a matter you can properly inquire into, Mr. Moore; for the present the answer may stand.

Mr. ULRICH: Will you just state what was said at the time by Mr. Cunningham about the crosses or anything else or what you were to do.

A. He told me that all these items which have been checked or had crosses is to be changed into vegetables.

Q. The items that had been checked with crosses were to be changed into vegetables?

A. Yes sir.

Q. Then who put those crosses on there?

A. I did, sir.

Q. You did it yourself, is that right?

A. Yes sir.

Q. What did you do it with?

A. I done it so that I would not have made a mistake, because, you know, taking these items here across to the [593] total, because I want to take out the full totals of all those items that he told me to check off.

Q. Did you have a ruler that you ruled it with?

A. Yes, to make sure that I get the right amount there.

Q. Now I show you the United States Exhibits "D" and "E"——

Mr. MOORE: "E" is a copy of "D", is it not?

Mr. ULRICH: "E" is a carbon copy, so far as typewriting is concerned. Do you see those; what

(Testimony of Monty Roque.)

are those; did you prepare those documents?

A. I did, sir.

Q. What are they, and when did you prepare them?

A. This is the bill that I made out there that I was ordered to change those items into vegetables.

Q. And that is where you put these various things that you had run lines through into vegetables?

A. Yes sir.

Q. When did you prepare those statements?

A. The day that Mr. Cunningham came down.

Q. The day that Mr. Cunningham came down?

A. Yes sir.

Q. You had ruled these lines through there, and then you went ahead and put other things in place of the totals?

A. Yes sir.

Q. Now I call your attention to the fact—first, I ask you, when Mr. Cunningham came in there and asked you to make these changes of the articles that he had marked with crosses, was Mr. Mookini there?

A. No sir.

Q. Had Mr. Mookini been present at any talk that had been had about making those changes?

A. No sir. [594]

Q. I show you this changed Exhibit "D", and also "E", which appear to bear, the one the signature, and the other the initials of Mr. Mookini,

(Testimony of Monty Roque.)

and I'll ask you happen to know anything about how those signatures of Mr. Mookini came to be on those bills?

A. Oh, right after I finished making this bill came along in the office and when I handed to him I told him, "Here is a corrected bill for the Mothers' Day", and I asked him to O. K. it.

Q. And did he take it and write his name on it?

A. Yes, he looked up the figures and just signed it and gave it to me.

Q. Was Mr. Cunningham there at that time?

A. Yes, he appeared there; I think at the time Mr. Mookini was signing this bill Mr. Mookini came along.

Q. Mr. Cunningham, as I understand, then had gone out after delineating the making of these changes, and you had made the changes, and Mookini came in after they had been completed?

A. Yes sir.

Q. Before Cunningham had come back?

A. Yes sir.

Q. Now Mr. Roque, do you remember another order that was placed with Lee Chong Company for a luau bill in September or along about the first of September?

A. I do.

Q. Were you there in the store when anyone placed the order for that luau dinner?

A. Yes sir.

(Testimony of Monty Roque.)

Q. You were?

A. I was.

Q. And who placed the order with your store for the luau dinner? [595]

A. Mr. Cunningham, as usual.

Q. Was Mr. Lee Chong there when that order was placed?

A. Yes sir.

Q. Well, what happened on that occasion?

A. On that occasion Mr. Cunningham came in with Mr. Lee Chong, and I was in the office, and he told him that he wanted to place this order for September 1st,—that was a day or two before, I think—and Mr. Lee Chong took the order while he was reading his list for this order, and told him that it would be the same as the May 12th, to change those non-eatables stuff to vegetables.

Q. Who told whom that?

A. Mr. Cunningham.

Q. Told whom that?

A. Told Mr. Lee Chong.

Q. And you were there?

A. I was there, present.

Q. Do you recall whether or not there was on that list, for example, keawe wood and chicken wire; do you remember those items as being on the list that he gave him?

A. Yes sir.

Q. And certain other things that were not eatables?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Did you then prepare a bill?

A. Yes sir.

Q. Did you get these various articles together for shipment to the Camp?

A. Beg pardon?

Q. Did you collect—get together—the various articles for the order that was to be sent out to the Camp, or was that somebody else's duties? [596]

A. Well, the way they do that, when they get the list then they make another list for all the rest of the store, the working men to gather out what they need; all I make is the bills.

Q. Did you prepare the bill which was presented on the delivery of that luau—let's call it the Labor Day order; did you?

A. You mean, on the September 1st?

Q. The September 1st order, yes.

A. Yes sir.

Q. You prepared that bill?

A. Yes sir.

Q. I show you the United States Government's Exhibit "G"; I ask you if that is the bill that you first prepared for that September 1st order?

A. Yes sir.

Q. Calling your attention to the signature or initials at the bottom of the bill "Received the above articles", whose initials are those?

A. The initials, I know that's Mr. Cunningham's initials.

(Testimony of Monty Roque.)

Q. Where was this order delivered, this September 1st order?

A. C. C. C. Camp.

Q. Was it taken out there by you, or was it delivered at your place of business?

A. This order is the only order that went to the Camp on the Camp's truck.

Q. That is, where did the C. C. C. Camp people take delivery from you of the order?

A. From our place.

Q. That's your place of business?

A. Yes sir.

Q. They took it in their truck, is that right?

A. Yes sir. [597]

Q. Were you there when these goods were loaded on to their truck?

A. Yes sir.

Q. Who was there on the truck taking delivery of the goods for the Camp?

A. There were two working men from the Camp.

Q. Two working men from the Camp?

A. Yes sir; the driver and the helper.

*Q. Where did Mr. Cunningham give you this O. K. or receipt; sign it at that time, or some other time?

A. Mr. Lee Chong——

Mr. MOORE: May it please the Court, that's the same thing I objected to here. He asks who was there, and then he don't get the answer he wants, then he asks was so and so there. Let's let this witness testify.

(Testimony of Monty Roque.)

Mr. ULRICH: On the other hand, I'm not at all concerned with whether Mr. Cunningham was there or not; I don't know, and I am asking him. I thought he was there, because he signed the receipt; if he wasn't there, I am just asking him if it was signed at some other time. I don't think it's improper on direct.

Mr. MOORE: The question is very leading.

Mr. ULRICH: The question is, "Did he sign it at that time or some other time?" I merely want to know what the fact is.

The COURT: Just what was the form of the question, Mr. Reporter?

(Reporter reads question, marked *, on this page.)

A. Mr. Cunningham never give me this.

Mr. MOORE: Wait a minute—— [598]

Mr. ULRICH: I'll withdraw the question. I ask you this question: Do you know Mr. Cunningham placed his signature on that receipt?

A. I don't know.

Q. You don't know?

A. No.

Q. Now I'll ask you the question directly: Do you know whether he was there when the goods were loaded on the truck—Mr. Cunningham?

A. I don't know.

Mr. MOORE: May it please the Court, he can ask this witness who was there, and he can reply. This idea of saying "Was so and so there", or "Was this person there"—let him tell who was there.

(Testimony of Monty Roque.)

Mr. ULRICH: Well, I think it's reasonable to ask him whether Cunningham was there or not; if he wasn't there, the witness will say so. We have been directing questions as to various people—"Was Mr. Mookini there?"—counsel has been examining the same way. All right; I withdraw the question. Start out and give us, as nearly as you can remember, the people.

The COURT: He has already stated there were two of the workmen from the Camp there.

Mr. ULRICH: Now I'll ask you, was anybody else there from the Camp, as nearly as you can remember?

A. That morning, I couldn't recall who else over there besides those two drivers.

Q. You don't recall anyone else being there?

A. Yes.

Q. That's perfectly all right. Do you remember at that time what if anything was done with this statement [599] that you had prepared; did you keep it there, or did you give it to anybody on the load, or not?

A. No; I gave it to Mr. Lee Chong, and Mr. Lee Chong made a trip to the Camp to have it OK'd.

Q. You gave it to Mr. Lee Chong, and he took it out to the Camp?

A. Yes sir.

Q. Do you recall a later time when this bill, in which you had listed certain non-edibles as vegetables and edibles, was changed back; that is, separated

(Testimony of Monty Roque.)

again into the edibles and non-edibles as originally ordered and delivered; do you recall that having happened?

A. Yes sir, I recall.

Q. Will you tell what happened on that occasion, who was present, and so forth?

A. That was away back later, on October, around October 2nd or 3rd; Mr. Miles came down to see Mr. Lee Chong about having these segregated bills —what I mean, to make a separate bill of this actual delivery in the Camp—in my presence in the office.

Q. He asked Mr. Lee Chong to separate the——

A. All that actually delivered; like, for instance, the keawe wood and the chicken wire, and all those non-edibles stuff.

Q. He wanted to have that put on a separate bill, is that right?

A. Yes sir.

Q. And had you do that?

A. I did.

Q. That is, you put it—the keawe wood and various things that had been listed as vegetables, on a separate bill?

A. Yes sir. [600]

Q. Now I have here two documents, both of them bills listing keawe wood and chicken wire and so forth, totaling $72.50, one of those bills being addresesd to "C. C. C. Camp Canteen", and the other being addressed merely to "C. C. C. Camp". Did you prepare both of those documents, by the way?

A. Yes sir, I did.

(Testimony of Monty Roque.)

Q. Referring to Government's Exhibit "J" and Defendants' Exhibit 1. You have just testified that when Mr. Miles came in and asked that these be segregated, you prepared a separate bill?

A. Yes sir.

Q. Which one of those was the first bill that you prepared for him at that time?

A. This one (indicating).

Q. "This one" referring to Defendants' Exhibit 1, which was merely addressed "C. C. C. Camp"?

A. Yes sir.

Q. Without any "Canteen" on it, is that right?

A. Yes sir.

Q. What did you do with this separate bill; do you know what was done with it, the first separate bill?

A. I give it to Mr. Lee Chong to take it up to the Camp.

Q. You gave it to Mr. Lee Chong to take out to the Camp?

A. Yes sir.

Q. Now, was there a later time when you had another conversation with Mr. Miles about this separate bill?

A. Yes sir; that's the time when Mr. Lee Chong went to the Camp; while on his way down Mr. Miles came in to the office.

Q. I understand Mr. Miles came to the office, and who was present? [601]

A. In my presence and Mr. McGregor.

(Testimony of Monty Roque.)

Q. You were there, and Mr. McGregor was there?

A. Yes.

Q. And Mr. Lee Chong was on his way to the Camp or out at the Camp?

A. Yes sir.

Q. What happened on that occasion?

A. He asked for Mr. Lee Chong, and I told him that Mr. Lee Chong had went to the Camp to take the statement for the month of September and this bill for the keawe wood and chicken wire, all those things that he asked to be sepa[illegible]

Q. Anything else happen?

A. And he asked me—well then he said, "Why didn't he wait?" Well, I say I don't know, but I say he went and take this statement. And he says, "Well, connect me to the Camp", so I get the C. C. C. Camp on the telephone and handed it to him, and he talked through the telephone.

Q. What did he say, if you remember?

A. As far as I can remember, he asked for Mr. Colman, and by the conversation there he asked if Mr. Lee Chong is still in the Camp, and of course I don't know what was the answer at the other end. And I heard him say, "Well, keep that statement and come down in town and give me that statement"; he say, "Come in town and meet me in town and give me that statement, and don't let nobody see it."

Q. Talking to somebody out there?

A. To somebody in the Camp.

(Testimony of Monty Roque.)

Q. Did Mr. Miles at that time say anything about charging anything to the Canteen?

A. Yes; he asked me how I made the bill that Mr. Lee Chong—the change I made that Mr. Lee Chong took to the Camp; [602] I told him that I merely separated the $72.50 which is charged to keawe wood and all that, to the Camp, and he said, "No, I don't want it that way, I want it charged to the Canteen, I told you folks." I say, "Well, I don't know, the only time I knew about this Canteen is now that you mention this;" I says, "Well, I can do that;" so I made out again other changes, I put "Canteen" on it, charging the Canteen.

Q. Now I show you United States Exhibit "J", the same bill, with the "Canteen"; I ask you if you prepared that as a result of that conversation?

A. I did.

Q. As I understand it, at that time there were present yourself, McGregor, and Miles?

A. And Mr. Miles, yes sir.

Q. And that's the first time you had heard anything about the Canteen?

A. Yes, the first time.

Q. Did you see Mr. Miles later in that day or a later time?

A. Yes. After he told me to make out that bill to be charged to the Canteen, he told me—I think he went out and told me that he would come back; I am pretty sure, I think he came back later in the afternoon and took a copy of it.

(Testimony of Monty Roque.)

Q. At the time that you took these two orders, that is, the Mothers' Day order and the Labor day order, was Mr. Mookini present at either time?

A. Several times he come down to the store with Mr.——

Q. No, no; at the time you took the Mothers' Day order and at the time you took the Labor Day order, was he present on either of those occasions?

[603]

A. No.

Q. But he did come to the store from time to time, did you say?

A. Oh yes, sir.

Q. Was there a time, Mr. Roque, when there was a discussion had in your store about the payment of Mr. Lee Chong by Mr. Miles, if you were there and recall such a conversation?

A. Yes, I recall one morning he came down with a check.

Q. Do you remember about when that was?

A. That was around October 11th or 12th, I couldn't just exactly remember what date, but I know he came down with a check.

Q. Who came down with a check?

A. Mr. Miles.

Q. All right; what happened on that occasion, if you recall?

A. When he came down that morning Mr. McGregor happened to be there again, and myself, and also Mr. Lee Chong, and he presented the check to Mr. Lee Chong and said, "Here is your money for

(Testimony of Monty Roque.)

your September account." And Mr. Lee Chong looked at the check, and we figured it out, and that was short of some change.

Q. Short of what?

A. Short of some change; it wasn't the whole figure that they owe us for the September account; and so he asked Mr. Miles what was the shortage, and he says, "Well, I deducted the $37.65 from the Mothers' Day bill, and we'll pay you that amount from the Canteen." And so Mr. McGregor happened to come in—not to come in, I mean to enter into the conversation, and asked what was the deduction for. "Well," Mr. Miles says, "there was an error on the May 12th [604] payment, and I want it to have been done this way so I could pay it from the Canteen"; so Mr. McGregor told him, he says, "Well, if there was an error on that payment on that May 12th you can just issue a check from the Canteen to the Mess Fund"; that was the argument between them, in front of me, in the office.

Q. As a result of the conversation there, did Mr. Lee Chong accept that check, or not?

A. No, he refused to accept the check.

Q. Do you know of anything else that happened there, or have you told us everything?

A. Well, it was between Mr. McGregor and Mr. Miles, the argument, you see; and Mr. McGregor asked him, "Are you going to pay all the rest of the balance of this from the Canteen?" He says,

(Testimony of Monty Roque.)

"Yes." He says, "Well, we won't accept the check here." He told Mr. Lee Chong don't accept the check and we would go down there to the Camp and ask for the full amount from the Canteen and also from the Mess Fund what they owe us; so they did went.

Q. You kept, you say, the account for the Camp and the accounts for the steamship companies?

A. Yes sir.

Q. And each statement that went out to the Camp there, such as these statements, was made up by you, is that right?

A. Yes sir.

Q. There has been testimony in this case offered by the prosecution to the effect that not only were these bills changed for the Mothers' Day and Labor Day bills, but that there was a regular practice, beginning in April, every month, of changing bills to camouflage personal groceries [605] that were sent to Mr. Mookini. Now, did anything of that kind ever happen?

A. No sir, not that I know of.

Q. Did you have anything to do with Mr. Mookini's personal account with the Lee Chong Company?

A. There is a time on the month of September that he asked us to give him a credit of groceries.

Q. Was that the only time you had him on the books there at all for groceries?

A. Yes sir.

(Testimony of Monty Roque.)

Q. I show you the Defendants' Exhibit "A" for Identification only, and ask you if you made out that account?

A. Yes sir.

Q. Is that your handwriting?

A. Yes, I made this out.

Q. Is that the account that Mr. Mookini had with the Lee Chong Company?

A. Yes sir.

Q. And is it the only account he ever had with the Lee Chong Company?

A. The only account.

Q. Covering the month from September 9th to October 7th, is that right?

A. Yes sir.

Q. Total amount $48.05?

A. Yes sir.

Mr. ULRICH: I think it may be received as an exhibit now, if Your Honor please.

The COURT: You offer it, do you?

Mr. ULRICH: I do.

The COURT: Any objection? [606]

Mr. MOORE: No, Your Honor.

The COURT: It will be admitted.

(Marked "Defendants' Exhibit 3")

(Later corrected to "4"; see page 405.)

(Testimony of Monty Roque.)

Crim. #8518

DEFENDANTS' EXHIBIT #4
Admitted

Crim. #8518 Defts'. Exhibit "A" marked for ident.
Mr. R. Mookini

Dates		Accts.	Pmt.	Bal.
Sept. 9	Mdse & cigarettes	12.75		12.75
" 12	"	2.60		15.35
" 14	"	1.65		17.00
" 16	"	3.00		20.00
" 16	Chop Suey from Happy Inn	4.40		24.40
" 22	Mdse	3.00		27.40
" 22	Ham, Eggs & Bris. Stew	1.80		29.20
" 25	Mdse.	3.25		32.45
" 30	"	7.85		40.30
Oct. 6	"	6.10		46.40
" 7	Chop Suey taken home	1.65		48.05
	4/3/35 paid on a/c			40.30
			Bal.	7.75

[120]

Mr. ULRICH: (Showing to the jury): This is the account of Mookini with Lee Chong Company from September 9th to the final item October 7th, showing payments, and balance still owing of $7.75. Is that right?

A. That payment—I never receive any of those payments.

Q. Oh, it's not your handwriting?

A. No sir.

Q. Mr. Roque, I'm going to ask you whether or not Lee Chong Company had liquor down there at any time and, if so, what kind of liquor and for what purposes it was used?

(Testimony of Monty Roque.)

A. Well, there are times that we have beer, and also several times had some of these Chinese liquor, whatever you call them.

Q. What do you do with that?

A. Every once in a while the Company buys these Chinese liquor for their working men.

Q. So far as you know, and to the best of your recollection, was there ever any liquor sold by Lee Chong Company to anybody?

A. Never.

Q. Did you ever have or buy around there any gin or whiskey?

A. No sir, not in my knowledge.

Q. When people would come there to drink, or would come in and drink, there's been some testimony about Mr. Lee Chong supplying the ginger ale and ice water; do you remember where the liquor was bought from?

Mr. MOORE: May it please the Court, I object to that. This is a witness on the stand; he is not a defendant, and [607] going in here with "There is some testimony about Mr. Lee Chong furnishing ginger ale", now, may it please the Court, that is not proper and he should not inform this witness what the testimony is and then let him testify in accordance with it or contra to that; let him give his own testimony without this prompting.

Mr. ULRICH: I think counsel is right on that last question, if Your Honor please; I'll withdraw any reference to prior testimony; I just want to get along as quickly as possible.

(Testimony of Monty Roque.)

Q. State if you will, Mr. Roque, what happened about drinking down there, of any people other than the employees or the men that you have been talking about, if you recall anything of that kind having happened; if you don't, just say so.

A. I do recall; several times boys from the Camp came down in the store with their bottle of—I don't know what it is, whether gin or whiskey—and asked us to lend them some glasses with a little piece of ice, so we gave them the glasses and we cracked some ice for them and put it in the bowl and give it to them in the office.

Q. You recall that happening, do you?

A. Yes sir.

Q. When you say "boys from the Camp", to whom do you refer?

A. I don't know which is; there's about four of them one time, in on instance; Mr. Cunningham and Mr. Mookini once or twice, with the boys, having a little friendly drink.

Mr. ULRICH: May I mention these names, Mr. Moore, that you mentioned this morning—Mr. Colman and Mr. Gibson?

Mr. MOORE: Well, ask him about "anybody else". [608]

Mr. ULRICH: Well, all right. Do you remember anybody else?

A. Well, that's only the two persons that I know.

Q. The only ones you knew?

A. Yes, the ones that I knew is Mr. Mookini and Mr. Cunningham.

(Testimony of Monty Roque.)

Q. There were some other men whom you didn't know?

A. I don't know them, but they came there.

Mr. ULRICH: That's all.

(Recess—10:38 to 10:48 a. m.)

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. By whom are you employed?

A. By Mr. Lee Chong.

Q. And you were employed by him away back when he first started his store in 1933, was it?

A. 1932, sir.

Q. And what time in 1932 did he start that store?

A. Same time that store was opened, that's July 22nd, I think, or July 20th.

Q. And you say that you were a clerk there and solicited for business, and also a bookkeeper?

A. Not exactly a bookkeeper.

Q. Well, do you help put up these orders in the store?

A. Beg pardon?

Q. Do you help put up the orders in the store that go out to your customers?

A. From time to time, yes.

Q. Well, is that principally your business, or——

A. No; my really work there is to solicit business from ships and to make invoices for him in the office. [609]

(Testimony of Monty Roque.)

Q. Then, your principal thing is, you go out and visit the stewards and so forth on board these boats to get orders for ships stores?

A. Yes sir.

Q. And you keep those accounts and the C. C. C. account; in other words, you keep the books for those two particular things?

A. Yes sir.

Q. And with reference to the ships' accounts, you have kept those since you've started to work there and are still keeping them?

A. Yes sir.

Q. And you say that while Mr. Lee Chong was over on Hawaii that you did act in the capacity of looking after the running of the store?

A. Yes sir.

Q. Now, calling your attention to United States Exhibit "B", you say that these lines that are drawn through there were drawn through by you?

A. Yes sir.

Q. And that later on, at the request of Mr. Cunningham, these were changed to what is United States Exhibit "D", is that right?

A. Yes sir.

Q. Keep that so you can refer to it, in your hand, because I am going to ask you some questions. Now, will you call off the items on that exhibit that are not proper or that are not the ones that were actually delivered; start from the top and go right down.

A. Oysters is the first. [610]

(Testimony of Monty Roque.)

Q. All right; what is the next item that wasn't delivered?

Mr. ULRICH: What list are you showing him?

Mr. MOORE: United States Exhibit "D".

The COURT: The invoice that has the lines drawn through it?

Mr. MOORE: No, no, Your Honor; it's the one that's changed from that.

Mr. ULRICH: I don't think he can pick them out that way; if he has the other list, he can check one against the other.

A. Yes sir, if Your Honor please.

Mr. ULRICH: No; ask him if he can pick them out.

Mr. MOORE: I've got the man under cross-examination, and we're entitled to have that.

A. Fresh spinach, white squash, fresh lima beans.

Q. How about 4 cases of apples?

Mr. ULRICH: Is this a memory test, or something?

A. I just couldn't exactly tell you——

Mr. MOORE: Do you remember when Mr. Lee Chong was over on the Island of Hawaii?

A. Yes sir, I remember.

Q. And you remember that Mr. Deville came down to the store?

A. Yes sir, I do.

Q. And you remember in there that he took a photostatic copy of the bill that you have there, that is, a photostatic copy of Exhibit "D", and

(Testimony of Monty Roque.)

asked you to name off to him what of those items were camouflaged or were not proper; do you recall that?

A. I recall that.

Q. And you called them off, didn't you?

A. Didn't call them off;——

Q. You didn't? [611]

A. (continuing): I told him to show me the original which he took, and then probably I could help him out with the one he wants.

Q. (After conference with Mr. Deville): I am incorrect; that he had that particular paper that you have in your hand, or did have in your hand, United States Exhibit "D"; do you remember that he asked you to call them off, and you called them off?

A. I didn't exactly call them all off, Your Honor.

Q. Well, don't you recall that as you called these items off, you called off 500 oysters, and 4 cases of apples, and 400 pounds of pumpkin, and 400 pounds of squash, and 400 pounds of spinach, and 40 pounds lima beans?

A. I did not call all those off.

Q. You deny that you called all those off?

A. Yes.

Q. Then, if Mr. Deville says that, that isn't true?

A. That isn't true that I called out those articles, but I mentioned a few things.

Q. What you did mention, then, is what I got your statement a little while ago—the 500 oysters,

(Testimony of Monty Roque.)

the spinach, the white squash, and the lima beans; but you didn't call off the pumpkin and the 4 cases of apples?

A. Well, I don't know; I'm not sure.

Q. Do you deny it?

A. I'm not sure.

Q. Do you remember when Lee Chong returned some few days afterwards and then Mr. Deville come down there again?

A. Yes, I recall that.

Q. And you had this same paper that Mr. Deville had, this same identical paper, which is United States Exhibit "D"?

A. I don't remember him bringing this paper; all I remember [612] that he ever come up in the store were when all those pictures were taken on our invoices.

Q. Don't you remember that Mr. Deville asked Lee Chong what were the camouflaged items on this, and he said "Well, I don't know", or words to that effect, "call Roque, he knows"; do you remember that?

A. Yes sir.

Q. And you came in the office, didn't you?

A. Yes sir.

*Q. Don't you remember that after Mr. Lee Chong told you to call these off and to call that in the office for that purpose, that you went right down the line and named these off, that is, the oysters, the 4 cases of apples, the 400 pounds of pumpkin,

(Testimony of Monty Roque.)

the 400 pounds of squash, the 400 pounds of spinach, and the 40 pounds of lima beans?

Mr. ULRICH: Just a moment; I ask that the question be made definite. I question whether he took the paper with nothing marked on it and from memory read it off without any reference to other papers.

Mr. MOORE: That he had a document which had these articles and which are identical to United States Exhibit "D".

Mr. ULRICH: Of course it would be easy enough for him, by proper reference to another document, to call them off; if that's the question, it's improper cross-examination. If you're trying to test this man's memory, whether he held the paper without any identifying marks on it and read it off and if Mr. Deville is going to say that he performed that memory feat for him, I submit it's immaterial and irrelevant.

Mr. MOORE: We submit, Your Honor, that the question is proper.

The COURT: The question may be answered.

[613]

Mr. MOORE: Read the question please, Mr. Reporter.

(Reporter reads question, marked *, page 383.)

Q. (continuing): And that when you called them off, Mr. Deville made a notation?

A. I never did call them off.

Q. You never did call them off?

A. Yes sir.

(Testimony of Monty Roque.)

Q. You deny calling them off in the presence of Mr. Lee Chong?

A. I did not.

Q. Don't you remember that when you called off the pumpkin that Mr. Lee Chong says, "No, that was delivered"?

A. No sir. All I told him, bring the original invoice that I had made it out from and then I could help him out, I couldn't do anything with those pictures, those pictures is blank to me.

Q. You can't understand photostatic copies, is that right? (no answer)

Q. You said you didn't check these goods on the load at all?

A. No sir.

Q. You don't know what went on the load?

A. Well, the driver had checked that; I don't know.

Q. You don't know?

A. No sir.

Q. You don't keep this book in Chinese, do you?

A. No sir.

Q. You can't read or write Chinese, can you?

A. No sir.

Q. And you have nothing to do with the articles that are listed in this book, have you.

A. Not whatsoever.

Q. And you don't know of your own knowledge whether or not there may be articles that are listed in that book that went on one of these loads going to the C. C. C. Camp? [614]

A. I don't know nothing about the book, sir.

(Testimony of Monty Roque.)

Q. Now, these flowers, do you know anything about those, for May 12th?

A. Yes sir.

Q. Where were those bought?

A. Well, they were all bought it themselves; what I mean, the driver and a couple of the men what working with me in our place they went out and bought the flowers.

Q. You mean the truck driver?

A. Yes, the truck driver.

Q. And a couple of the clerks in the place?

A. Yes sir.

Q. Do you know how much those flowers were?

A. After they add all the amount that they paid for the flowers they told me it was $17.50.

Q. They told you that the total amount of the flowers purchased was $17.50?

A. $17.50, yes sir.

Q. And that was all the flowers they purchased?

A. Yes sir.

Q. And that was all the flowers that was delivered to the C. C. C. Camp?

A. That's all the flowers that were delivered.

Q. You don't remember any discussion about flowers costing $23.75, do you?

A. No, I don't remember.

Q. And you don't recall any conversation between yourself, Mr. Lee Chong, and Mr. Deville, to the effect that the flowers cost $23.75, and those items were covered by the oysters in the sum of $17.50 and the strawberries in the sum of $6.25?

[615]

(Testimony of Monty Roque.)

A. No sir.

Q. That never took place?

A. No sir.

Q. Now, with reference to this May 12th order, that's the Mothers' Day affair, you say that you have a distinct recollection that that order was given by Mr. Cunningham?

A. Yes sir.

Q. And Mr. Mookini was not there?

A. Was not there when Mr. Cunningham had read the items that he had on his list, which he gave it to Mr. Lee Chong in my presence.

Q. And Lee Chong turned this list over to you and told you to make it up in accordance with what Mr. Cunningham had said?

A. Yes sir.

Q. And you made out these bills, putting this item of oysters on there, at Mr. Lee Chong's direction—that is, Cunningham directed Lee Chong and Lee Chong directed you?

A. Exactly, sir.

Q. Who gave the order of May 16th?

Mr. ULRICH: There isn't any order of May 16th in evidence, if Your Honor please.

Mr. MOORE: There's an order of May 16th, not in evidence; I'm testing this man's credibility; I submit we're entitled to do it.

Mr. ULRICH: Oh, if Your Honor please, I submit it would be highly improper to take him all through all the orders that have been placed by the

(Testimony of Monty Roque.)

Camp with them day after day and ask who placed the order. I'll submit the objection.

Mr. MOORE: (argument).

Mr. ULRICH: (argument). [616]

Mr. MOORE: (argument).

Mr. ULRICH: I'll submit the objection.

The COURT: If it's counsel's intention to attempt to examine all of these daily transactions throughout this period, the Court feels that would be quite irrelevant. If some specific test is made for a particular reason, it will be admitted.

Mr. MOORE: May it please the Court, it isn't our intention to go through each and every one of these, at all; it is our intention to pick some two or three at the most, at random, and see what he can give us on those.

The COURT: With very restricted limitations, you may proceed.

Mr. MOORE: Who gave the order of May 16th?

Mr. ULRICH: Now then, if Your Honor please, in order to put it on a parallel and make it a real memory test, if that's what's supposed to be the operation, it is submitted he should be shown the May 16th bill, something to tie it into this evidence, just like he's been shown these other bills.

Mr. MOORE: Here's one dated May 16th; do you remember that?

A. Yes, I remember that.

Q. Who gave that?

A. Who gave that order I don't know, I'm not so sure.

(Testimony of Monty Roque.)

Q. Do you know who was present when the order was given?

A. I couldn't remember that.

Q. You can't remember?

A. I remember making that bill, sir.

Q. You don't remember just how this order was delivered and taken out to the Camp?

A. No. [617]

Q. You don't know what time of day it was given?

A. No sir.

Q. The only thing you know about it is that you made out this list yourself?

A. Yes, I know that.

Q. And you know this initial here is Mr. Cunningham's?

A. Mr. Cunningham's, yes sir.

Q. Here's one of May 29th; who gave that order?

A. I couldn't specify who really give the order, but as far as my recollection serves me, all the orders that has been placed in the store was put by Mr. Cunningham.

Q. Well, can you tell anything from the voucher whether it was placed at the store, or over the telephone, or what?

A. I couldn't tell you whether this is—of course, there's orders that was given through the telephone, and there were times that he come down to the store, and give orders, and also there were times

(Testimony of Monty Roque.)

when they do deliver the goods and they would make a memorandum or a list of what they want for the next day.

Q. Mr. Mookini did give orders down there at the store, didn't he?

A. He did give orders there in the latter part of, as far as I can remember, it's around October.

Q. That's the first time he ever gave any orders?

A. Yes sir, after Mr. Cunningham was discharged from the Camp, what I understood, then he placed the orders.

Q. Didn't he come down with Cunningham the very first order you got, around April 5th or 6th?

A. I don't remember.

Q. You don't know how this list of goods, the last one I [618] showed you, was delivered, do you?

A. No, I don't remember.

Q. You don't know whether Mr. Lee Chong went out on the truck or not, do you?

A. No sir, I don't remember.

Q. You say you asked Mr. Mookini to O. K. this bill; that's referring to United States Exhibit "D"?

A. Oh yes, this one.

Q. Where was it signed?

A. Right in the office.

Q. Was anybody there besides yourself and Mr. Mookini?

A. No, it's just me and Mr. Mookini; I was just getting through making this bill when Mr. Mookini came in.

(Testimony of Monty Roque.)

Q. Did he compare it with the old bill that you had?

A. Well, I handed this bill to him and said, "Here is the corrected bill."

Q. You just handed this to him?

A. Yes sir.

Q. And that's all he had in front of him?

A. Yes, this and the duplicate.

Q. And then he signed it?

A. He signed it.

Q. And gave it back to you?

A. Yes sir.

Q. And then you went about your business and he went about his?

A. Yes sir.

Q. And that's all that happened then?

A. That's all.

Q. And Mr. Lee Chong or Mr. Cunningham weren't around at that time?

A. Mr. Cunningham came around, as far as I can remember, because he took the duplicate of that bill. [619]

Q. Mr. Cunningham took the duplicate of this bill?

A. Yes sir; while Mr. Mookini was signing this bill Mr. Cunningham came along.

Q. Well, was there ever a time in that store that Mr. Mookini did anything when Cunningham wasn't there?

A. Will you repeat the question?

(Testimony of Monty Roque.)

Mr. ULRICH: What do you mean? Merely being there would be something I suppose. "If he did anything when Mr. Cunningham wasn't there" —I ask that the question be made definite.

Mr. MOORE: Did Mr. Mookini ever go to the store when Mr. Cunningham wasn't there?

A. Oh yes, several times.

Q. Did Mr. Mookini ever give any orders for the C. C. C. Camp when Mr. Cunningham wasn't there?

A. No, never did.

Q. Never gave any order——

A. Not as far as I can remember.

Q. And you had orders at least once a week, didn't you, for the C. C. C. Camp?

A. Sometimes twice a week, sometimes three times a week.

Q. But, I say, at least once a week you had orders?

A. Oh yes, at least.

Q. About how often would these orders be given personally at the store—just to give us the best of your idea?

A. Well, there were times that they ordered every two days; sometimes—it all depend how much they order on that day——

Q. I don't think you understood my question. My question is this, Mr. Roque: About how often, or on an average [620] how many times, we'll say, a month would these orders for this Camp be given personally and not by telephone?

(Testimony of Monty Roque.)

A. Oh; that I can't tell you, how many times they have given the order by personally and how many times by telephone.

Q. You can't give us any idea of that, at all?

A. No, I don't think so; I am sorry.

Q. Would you say that they came in as many as five times a month?

A. More than that.

Q. Well, as many as ten times a month?

A. Probably.

Q. That's your best recollection; you judge about ten times a month that the orders were personally given?

A. Yes sir.

Q. And all these orders, except in the latter part of September, were given by Cunningham, is that your testimony?

A. Beg pardon?

Q. You say all these orders, except the ones in the latter part of September, were given by Cunningham personally, that is, when they personally given at the store?

A. Latter part of September I don't know.

Q. When was it, you say, that Mookini in the latter part of the thing gave some orders?

A. That's in October.

Q. Right up to the first of October, during all the time that Lee Chong was trading at the Camp, all the personal orders were given by Cunningham?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Now, with reference to this luau, your distinct recollection of that is that Cunningham gave that order? [621]

A. Yes sir.

Q. And Mookini was not there?

A. I don't think so.

Q. Well now, are you sure of that?

A. I am pretty sure of that.

Q. What?

A. I'm pretty sure of that.

Q. Well, are you as sure of that as of this other testimony that you've given?

A. Beg pardon?

Q. Are you as sure of that statement as you are of this other testimony that you've given?

A. Yes sir.

Q. Now, referring to United States Exhibit "G"; this is the original of the bill that you made out for that September luau affair, is it not?

A. Yes sir.

Q. And this is the one that has—as we say, it's there but you can't see it—the keawe wood and the wire and all that stuff?

A. That's right.

Q. Then this Exhibit "H" is the one, taken with the other exhibit for $72.50 that Mr. Ulrich showed you here a while ago, to make up the total of this bill?

A. Yes sir.

(Testimony of Monty Roque.)

Q. And, with reference to this Exhibit "H", that is the corrected bill, together with "J", the small one, and Defendants' Exhibit 1, that with one of these make up this?

A. Yes sir, that's right. [622]

Q. That is, "H" and "J" make up "G"?

A. Yes sir.

Q. Now, particularly calling your attention to "G"—I don't want any mistake on this—are you sure that Cunningham gave that order; you're positive of that?

A. Positively.

Q. And that Mookini didn't have a thing to do with it?

A. He wasn't around.

Q. Never went in the store at all about it?

A. Are you talking about a particular day——?

Q. I am talking about the September luau.

A. The particular day when he placed the order?

Q. Yes; did he have anything to do with this order at any time?

A. No, never did.

Q. Mookini never had a thing to do with that?

A. Not at all.

Q. In other words, you drew that up; Cunningham gave the list to Mr. Lee Chong, and you were sitting there in the office, is that right?

A. Yes sir.

Q. And, as Mr. Cunningham called these off, Lee Chong wrote them out, and then Cunningham

(Testimony of Monty Roque.)

told Lee Chong to put these items of keawe wood, chicken wire, and the items that are on that smaller bill that was later separated, that's Exhibit "J", to put those in as vegetables, is that right?

A. Exactly.

Q. Because they weren't eatables, they couldn't pay for them and they would have to put them in the other way?

A. Yes sir.

Mr. ULRICH: I don't want you to slip anything over on the witness; you said something about "couldn't pay for [623] them"; he said simply he put them over there because they were vegetables, because Mr. Miles wanted it that way; that's his testimony.

Mr. MOORE: He said that they would have to charge those as eatables?

A. Those would have to be charged as eatables.

Q. In other words, the effect was that's the only way they could get them paid for?

Mr. ULRICH: Just a moment. (argument).

Mr. MOORE: I'll withdraw the question.

Q. That was the first time that you had ever heard anything about this list of goods for the luau, was when Cunningham came in and told Lee Chong what to do, and he in turn told you what to do?

A. Yes sir.

Q. And from that time up until the luau load was taken away from the store, did Mookini ever come in about those luau items?

A. Up to it was delivered?

(Testimony of Monty Roque.)

Q. From the time the order was given until the time it was delivered.

A. I cannot remember whether he had been there.

Q. Did he ever discuss anything about this list of things on the luau bill between the time Cunningham gave the order and the time, as you say, they were loaded on the Civilian Conservation Camp truck at Lee Chong's?

A. Did they ever discuss?

Q. Discuss—talk to you about it?

A. About what?

Q. About these items that went out for the luau. [624]

A. No, he never discussed it.

Q. And nobody directed you to make any changes at all from the time that, you say, Cunningham gave you the order until they were delivered?

A. It was the time when he gave the order to Mr. Lee Chong, he said, "This bill has to be just like the May 12th.; all those non-eatables stuff must be changed into vegetables."

Q. You misunderstand. What I mean is this: You've got your order to change the non-eatables into eatables; Cunningham to Lee Chong, Lee Chong to you?

A. Yes sir.

Q. After that—now we've got there, don't go back before that—then from the time you got that from Lee Chong, were there any changes directed in that bill from then until the time it was delivered?

A. No sir.

(Testimony of Monty Roque.)

Q. In other words, the whole transaction was in that one sitting with yourself, Lee Chong, and Cunningham?

A. Yes sir.

Q. And the only changes made with reference to that luau bill were long after this and in the month of October when Mr. Miles came down and told you—I think, when Mr. Lee Chong wasn't there?

A. Lee Chong and me.

Q. You and Lee Chong were together?

A. Yes sir.

Q. And told you you'd have to take out the items of keawe wood and other things, making $72.50, and bill those separately?

A. Exactly.

Q. And the others billed as they were delivered?

A. Yes sir. [625]

Q. And then later on there was a direction or a request by Mr. Miles on this $72.50 bill, which is Exhibit "J" or which is Defendants' Exhibit 1, to have the word "Canteen" added to that?

A. Added, the second time.

Q. As it appears on United States Exhibit "J"?

A. Yes sir; that's the second time when he came.

Q. Who kept the books for the private customers?

A. We have no private customers' accounts on our place, except that was over there with certain individual friends that they had buy a few things that the boss will favor to have an account.

(Testimony of Monty Roque.)

Q. You kept the books for the C. C. C. Camp, didn't you?

A. Yes, the record of sales to the C. C. C. Camp and ships.

Mr. MOORE: Has this got a mark, Mr. Ulrich?

The COURT: That's the book in which one page is designated as "Defendants' Exhibit 3". It could properly be referred to as the book that has Defendants' Exhibit 3.

Mr. MOORE: On Defendants' Exhibit 3, is this your handwriting up here (indicating)?

A. Oh yes.

Q. This is your handwriting, and this is what you saw when you kept the books for the Civilian Conservation Corps Camp?

A. Yes sir.

Q. And this (indicating) is the ships' affairs?

A. Ships.

Q. This, as I take it, is just the monthly statements—gross amounts?

A. That's just a memorandum of all the sales. [626]

Q. In other words, this represents the gross sales or the total sales, we'll say; this first item, $582.26, for May, is that right?

A. Yes sir.

Q. Everything that was sold?

A. In one month.

Q. Up to May 7th, June 7th, July 7th, September 3rd, October 12th?

(Testimony of Monty Roque.)

A. The memorandum of payments we received from the Camp.

Q. In other words, that's the checks that you got from Mr. Miles?

A. Exactly.

Q. And those were in payment of the vouchers that you presented?

A. Beg pardon; I didn't receive the checks; it's Mr. Lee Chong, and he tell me the amount and I would put on the memorandum.

Q. But you kept this account in the regular course of your business?

A. Yes.

Q. As bookkeeper for the Camp?

A. Not exactly. If you call that a "bookkeeper", I'll let it go as that; just I was keeping all these memorandums.

Q. Don't each one of these, except the $820.00, the last item, don't they truly represent the total of each final statement that you sent out to the Camp for payment?

Mr. ULRICH: If Your Honor please, if he's going to check these figures against the statement figures, I don't know whether the witness has put down the adjusted amounts [627] as between the different funds or not; I think, in fairness to the witness, he ought to be able to see what he's talking about; personally I don't know what those totals are; the witness can tell us, but he ought to be able to look at his data.

(Testimony of Monty Roque.)

Mr. MOORE: Showing you United States Exhibit "F"; do you know what that is?

A. Yes; this is the first statement for May.

Q. That's the statement for May that appears here in this book, doesn't it?

Mr. ULRICH: Show him the book; it doesn't appear as the May amount.

Mr. MOORE: It's been testified here that the May bills are rendered in June, that is, they are paid in June. Now, under June don't you find $901.65?

A. Well, yes; yes, this is May 7th payment for the month of April. If you want to know, Your Honor, these amounts that is recorded here is the amount of checks that were received; whenever Mr. Lee Chong receive it he would tell me and I would just put it in that memorandum.

Q. Then the total of United States Exhibit "F" appears here under date of June 7th, doesn't it?

A. It does, yes.

Q. $901.65?

A. Exactly.

Q. And then here is United States Exhibit "I"; you notice that the original bill was entered for $857.78, and then that $37.65 that's been testified to has been taken off, and the total is $820.13?

A. Yes sir.

Q. And that appears here, doesn't it?

A. Yes sir. [628]

Q. You say you also kept this account of Mookini's?

A. Yes sir.

(Testimony of Monty Roque.)

Q. And this is the only account that he ever had with you?

A. That's all.

Q. And this started on September 9th, is that right?

A. Yes, that's what it is.

Q. Did he ever buy anything else in the store except what's listed in this book?

A. Oh, he did, from time to time, he bought goods from the store.

Q. And they were delivered out to his house?

A. Delivered up to his house.

Q. And that started practically from the time that you started dealing with the C. C. C.?

A. I don't know just how soon he started buying goods from us, but he did before.

Q. It wasn't very long after you started, though, that he started buying goods?

A. No.

Q. They were delivered out to his house, that is, his own home?

A. To his own home.

Q. Is there any place down at the store that you got a document or a list or anything of what was delivered to his house?

A. Well, there is "cash and carry"; it goes to Cash and Carry record, you see.

Q. "Cash and Carry"; have you got such a record down there?

A. No, I don't handle the bookkeeping of any daily sales of any articles.

(Testimony of Monty Roque.)

Q. Who does? [629]

A. They have this Chinese bookkeeper there.

Q. And is this supposed to have the record of all the cash sales?

A. The daily sales, yes sir.

Mr. ULRICH: Your Honor, I object to the question as absurd; that is cash sales.

Mr. MOORE: Well, he pointed to it; I don't know what he means.

A. I didn't say it is in that book——

Q. You say somebody else kept those cash records?

A. This is the way I understand, the way they keep the cash sales over there: At the end of every day they would check up how much they have sell off according to what it shows in the cash register, and that's the record that they have on the book.

Q. Well now, when you deliver stuff some place don't you have some sort of slip or something?

A. Well, they generally pick up the goods from the store and pay for it, and then ask to be delivered to their house.

Q. Don't you keep any record of the slips that go out?

A. No, not "cash and carry"; they just go ahead and count out the amount of goods they pick up, and they pay for it.

Q. You've told us a little while ago that they were delivered to Mr. Mookini's house?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Now, wasn't there any slip that went to Mr. Mookini's house with these goods?

A. Sometimes I think they did.

Q. And don't you keep a copy of that slip that goes out?

A. Not when they pay cash. [630]

Mr. ULRICH: If Your Honor please, I don't want to make any statement to mislead counsel or curtail his cross-examination; this book does contain a list of cash receipts for cash sales each day; for what he wants to make use of it. (Mr. Ulrich hands book to Mr. Moore).

Mr. MOORE: Am I correct, Mr. Ulrich? (No response).

Q. You knew Chun Yau Chee?

A. Yes, I know him.

Q. Did he keep some Chinese record down there?

A. Yes sir.

Q. And he's gone to China?

A. He's gone, yes.

Q. Now, you had another boy down there who used to keep books, didn't you; you had a boy down there by the name of Henry Lee, didn't you?

A. After Mr. Chun Yau Chee he left for China, naturally they had to have somebody to keep the books, and it's the boy that took the bookkeeping there, or whatever you might call it.

Q. And he kept all these records afterwards?

A. Yes sir.

(Testimony of Monty Roque.)

Q. And this Henry Lee, he understands English, doesn't he?

A. Yes sir.

Q. Educated here?

A. Yes sir.

Q. And he keeps those in English, doesn't he?

A. Yes sir.

Q. And he keeps the records of the cash sales?

A. He must.

Q. Who is this man McGregor we heard so much about?

A. He's a friend of Mr. Lee Chong.

Q. He's a sailor, isn't he?

A. Sailor? No. [631]

Q. What is he?

A. He is working in the Navy Yard—civilian employee.

Q. Bookkeeper of some kind, isn't he?

A. I don't know just exactly; I understand that he's assistant paymaster at the Navy Yard.

Q. Civilian assistant paymaster?

A. Yes sir.

Q. And he also assists Mr. Lee Chong in making up his tax returns, doesn't he?

A. Yes sir.

Q. Now, down there at the store you're there practically all the time, aren't you, Mr. Roque?

A. Yes sir.

Q. And do you know this man Colman, a big tall fellow, a young fellow about 25 or 26?

(Testimony of Monty Roque.)

A. I don't know him by name, but maybe I can identify him. Two tall boys that used to be in the Camp they come down a couple of times.

Q. Another one, tall, skinny, and had a little gold in his teeth, or something?

A. I don't recollect.

Q. Do you know this fellow Gibson?

A. I don't know them but I heard their names, Gibson and Colman.

Q. You've heard the names, but you don't knw them?

A. I heard the names but I don't know them.

Q. Isn't it true, Roque, that these boys, particularly Mookini and Cunningham, used to go in the store practically every time they were in town, go in there, and Lee Chong set up booze for them?

Q. What do you mean "every time"? [632]

Q. Practically every time they were there, isn't that right?

A. I could only recollect—well, several times; I wouldn't say every time.

Q. And they had you bring in the ice and ginger ale when they ran out, didn't they?

A. I do sometimes, yes.

Q. And Lee Chong set up the booze, didn't he?

A. Beg pardon?

Q. Lee Chong furnished the booze?

A. The booze?

Q. Yes.

A. No sir.

(Testimony of Monty Roque.)

Q. He furnished cigars and cigarettes, didn't he?

A. Yes; that's the custom of our place to give cigars and cigarettes, and ginger ale sometimes.

Q. You said that when they changed this Exhibit "J" and Miles asked you to put the word "Canteen" on it, is my understanding correct that Miles —sometime during that conversation at the store, when you were there; I think you said McGregor was there—made a telephone call to Schofield?

A. Yes sir.

Q. And he asked for a man by the name of Colman?

A. He did.

Q. Then, when he got whoever he was talking to, what did he say; what did Miles say over the telephone?

A. He asked if Mr. Lee Chong there.

Q. Then what?

A. He says,—well—I don't know just what the answer at the other end, but according to what he said, he said, "Did you bring any statement—"

Q. Then was a little time that he was listening?

A. Yes. [633]

Q. Then what was the next conversation?

A. He said, "Get hold of that statement and bring it in town to me, and don't let anybody see it;" that's as much as I can remember.

(Testimony of Monty Roque.)

Q. In other words, after he had got whoever he wanted to talk to, he said, "Is Lee Chong there?"

A. Yes sir.

Q. Then, "Did you bring a statement?"

A. Yes sir.

Q. Then, "Get hold of that statement and bring it in to town, and don't let anybody see it."?

A. Exactly.

Q. And you don't know what statement he referred to?

A. I know the statement, because I was the one who made the statement.

Q. And what statement was that he was talking about?

A. That was the statement of the $72.50 items, the statement that I gave to Mr. Lee Chong the time he went to the Camp with the statement of the amount of September.

Q. That is, Defendants' Exhibit 1, is this the one?

A. That's the one.

Mr. MOORE: I think that's all.

Redirect Examination

By BARRY S. ULRICH, Esq.

Q. And the statement for the month of September was just the regular statement including the full amount for that month?

A. Yes sir.

(Testimony of Monty Roque.)

Q. So that, you had sent out with Mr. Lee Chong a statement for the month of September, giving the full amount, and then, just on a separate bill, this little item list of $72.50? [634]

A. Yes sir.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

The COURT: The Court will adjourn at this time until 9:00 o'clock tomorrow morning. Remember the admonition heretofore given you. Mr. McGregor, be here at nine tomorrow; we're going to adjourn until that hour.

Mr. MOORE: May it please the Court, there's an error, there has been a duplication. I'll ask, with counsel's consent, that this book be marked "4", as your other is already "3".

Mr. ULRICH: Any mark, yes.

Mr. MOORE: Since the introduction of the personal account of Mookini it has been erroneously designated as Exhibit 3, and wherever it has been spoken of it should be changed to Exhibit 4.

(Adjourned—11:49 a. m.) [635]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Wednesday, May 22nd, 1935; the Plaintiff appearing by Assistant United

States Attorney Willson C. Moore; the defendants being present with their respective counsel;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States, stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll also so stipulate.

The COURT: Let the record show that the respective counsel stipulate that the jury is present.

SAMUEL P. McGREGOR, Sr.

was duly called and sworn as a witness for the Defendants, and testified as follows:

Direct Examination

By BARRY S. ULRICH, Esq.

Q. Will you state your name, please? [636]

A. Samuel P. McGregor, Sr.

Q. Mr. McGregor, what is your occupation?

A. Clerk in the Disbursing Office, United States Navy Yard.

Q. Are you a civilian or a military employee?

A. Civilian employee.

Q. How long have you been with that office?

A. 16 years.

Q. Mr. McGregor, do you know Mr. Lee Chong, one of the defendants in this case?

A. Yes sir.

(Testimony of Samuel P. McGregor, Sr.)

Q. And how long have you known Mr. Lee Chong?

A. I believe it's over 25 years.

Q. You knew his father before him, I believe?

A. I knew his father and the family.

Q. What has been the character of your association with Mr. Lee Chong during the time that you have known him; have you known him well, or otherwise, and in what way?

A. In an advisory capacity after the father's death.

Q. Have you had anything to do with helping him with his books at any time?

A. Yes; make out his income returns and tax returns, year after year, and audit all his accounts.

Q. And have you been in the habit of being at his place of business from time to time?

A. Yes sir.

Q. How has that happened and what was the nature of your business down there?

A. Well, when I come in from my work I generally stop there and do my marketing and purchase my vegetables and wait for my family to call for me. [637]

Q. Now, Mr. McGregor, do you know Mr. Miles, lately the Director of the C. C. C. Camp?

A. Yes sir.

Q. Do you know Mr. Mookini, the other defendant in this case, who sits here?

A. I do.

(Testimony of Samuel P. McGregor, Sr.)

Q. Have you had occasion to meet a man named Cunningham, who was connected with the Camp?

A. Yes sir.

Q. Do you recall Mr. Cunningham being at that place of business of Mr. Lee Chong's or the Lee Chong Company late sometime last Summer, that is, the Summer of 1934, at a time when there was under way some sort of discussion or conversation about a luau that was to be held at the Camp?

A. Yes sir.

Q. I'll ask you, do you recall any conversation or anything occurring within your knowledge relative to the relations of Lee Chong Company to the Camp before this conversation I am about to call your attention to, or was that the first time that you personally came into contact or negotiated between the Camp and Mr. Lee Chong—the conversations I have called your attention to?

A. Well, I knew that Lee Chong Company was furnishing the C. C. C. Camp with supplies such as vegetables and fruits and so forth, but on this particular instance the discussions was on the line of the luau.

Q. Was this the first discussion or conversation that you had any part in relative to the Camp?

A. Yes sir. [638]

Q. Who was present—about when was this?

A. It was about a week or ten days before the luau, anyway.

Q. A week or ten days before they held the luau?

A. Before the luau.

(Testimony of Samuel P. McGregor, Sr.)

Q. Who was there?

A. Mr. Cunningham, Mr. Mookini, myself; Lee Chong ought to be there—whether he was in and out—I think he was there.

Q. What was said; what was the nature of the discussion?

A. The nature of the discussion was along the lines of how much quantity of pork, poi, mullet fish, kukui nut, and dried fish——

Q. Would be required for the luau?

A. Would he required for the luau.

Q. At that time was anything said about how any of these articles were to be charged, or anything of that kind?

A. No, no discussion.

Q. Was any order placed by anybody?

A. No, no order; it was simply Mr. Cunningham had a tentative list and he was consulting me in my past experience in the luau game, and he wanted to get a knowledge of how much quantity is required to feed 250 to 300 men.

Q. Do I understand that there was no order given at the time?

A. No, no orders given.

Q. The practical amounts were not yet estimated?

A. No, not at all.

Q. The best of your recollection—do you know Monty Roque, the bookkeeper or clerk or whatever he is at the Lee Chong Company?

A. Yes, I do. [639]

(Testimony of Samuel P. McGregor, Sr.)

Q. To the best of your recollection, was he present at the time of that conversation?

A. I couldn't say.

Q. What?

A. I couldn't say whether he was present; maybe he was; I couldn't say; I don't remember.

Q. Well, did he have any part in the conversation when talking with you there about the luau?

A. I don't believe he was there.

Q. You don't recall him as having been a party there?

A. I don't recall.

Q. Now Mr. McGregor, was there a later time at which you were present at a conversation between anyone connected with the Camp and Lee Chong Company, or any representative of that Company, relative to this luau order?

A. In connection with this luau, no.

Q. Not in connection with the luau; in connection with the bill, the invoice, or anything of that kind?

A. No, no.

Q. Do you recall any conversation with Mr. Miles, any occasion when Mr. Miles came to the place of business of Lee Chong Company?

A. Yes, I do.

Q. When was that?

A. That was after the luau, oh, I think a month after; that was in the month of October, that's right.

Q. And who was present on the occasion of that conversation that you've now referred to as having taken place in the month of October? [640]

(Testimony of Samuel P. McGregor, Sr.)

A. I was there, and Monty was there.

Q. By "Monty" you mean Monty Roque?

A. Monty Roque.

Q. The bookkeeper?

A. Yes. Both of us was there; I was on vacation time.

Q. Can you place it as nearly as you can in the month of October; was it in the first part of the month, or the latter part of the month?

A. It's in the first part of October.

Q. First part?

A. Yes; I believe it's on October 4th or 5th.

Q. You and Monty were there alone when Mr. Miles came in?

A. Yes, we were present in the office.

Q. Well, what happened? Let me ask you this: Besides yourself and Monty and Miles—

A. Mr. Miles came; just the three of us; Mr. Miles came in that morning wtih his luggage, and he inquired where Mr. Lee Chong was, and either myself or Monty told him that Mr. Lee Chong had gone to the C. C. C. Camp that morning, early; and he said he wanted to get in touch with him, so there was some discussion between Monty and Miles in reference to certain statements.

Q. As nearly as you can remember, what was that conversation, if you recall?

(Testimony of Samuel P. McGregor, Sr.)

A. It was in connection with a statement that he wanted to get from Lee Chong; so, finding that Lee Chong had gone to Camp, he asked Monty if he couldn't get in touch with the C. C. C. Camp right away by 'phone, and Monty connected up, and Mr. Miles communicated with the C. C. C. Camp.

Q. You mean, talked over the telephone?

A. Yes sir. [641]

Q. Did you hear what was said?

A. Right in my presence.

Q. Will you say what was said?

A. His conversation was that he inquired for a Mr. Colman on the other end; he wanted to speak to Mr. Colman; then he inquired whether Lee Chong was still there, and then I heard him saying, "Get hold of that statement, don't let anyone get hold of it, and bring it in direct to me today"; that was the conversation on this occasion.

Q. "Get hold of this statement and don't let anyone get hold of it"?

A. Yes.

Q. "And bring it in to me right away"?

A. Right away.

Q. Was there any discussion at that time, if you recall, relative to making any charge against a Canteen Fund?

A. Yes sir. The discussion came up between Monty and Miles, whether they had made two statements instead of one statement for that one particular charge on the luau; it appeared to me that Mr. Miles' chief objection was that he wanted—

(Testimony of Samuel P. McGregor, Sr.)

Mr. MOORE: Just a minute; I object to what "appeared" to him.

Mr. ULRICH: That may be stricken—what "appeared". You must state the best of your recollection what Mr. Miles really said.

A. Yes sir, that's my recollection, because he went over with me on it; so I told Monty, "I don't think there ought to be any objection to making two statements for one order of that date"; and he wanted a statement of the $72.50 [642] segregated and charged it to the C. C. C. Camp Canteen.

Q. Well, do you remember any discussion as to whether or not a separate statement had already gone out with Mr. Lee Chong?

A. My recollection was that there was a separate statement.

Q. What about the charging to the Canteen? Mr. McGregor, I show you the Defendants' Exhibit 1 and the Government's Exhibit "J", both of them being statements in the amount of $72.50, with the same items—keawe wood, chicken wire, and so forth —and one of them billed to "C. C. C. Camp" alone, without anything else, and the other billed to "C. C. C. Camp Canteen"; and I ask you if you know anything about those statements and if you can throw any light on them?

A. Yes; this is the statement that was made on the day I was there,—

Mr. MOORE: Indicating which?

Mr. ULRICH: Indicating Exhibit "J".

(Testimony of Samuel P. McGregor, Sr.)

Q. With the word "Canteen" on?

A. Yes, with the word "Canteen" on.

Q. That was made out the day that you were there?

A. Yes sir, in my presence; I advised Mr. Roque to go ahead and make out a statement with that "C. C. C. Camp Canteen" on it.

Q. And Mr. Miles was there?

A. Mr. Miles was there.

Q. And it was marked "Canteen" by his request?

A. Marked "Canteen" in his presence.

Q. Whether this was the one that Mr. Lee Chong had out there, or not, do you know, by referring to Exhibit 1?

A. I couldn't say. [643]

Q. By "out there" I mean out at the Camp.

A. I know that he took out a statement out there; but I am saying this is the statement, the statement with the certification on there, is the one that was prepared in my presence in Lee Chong's office.

Q. And that is United States Exhibit "J". Mr. McGregor, after this statement had been made out, as you say, according to Mr. Miles direction, did anything else happen, or did that end the conversation?

A. No; he was satisfied; and I assured Mr. Miles that as soon as Lee Chong got back from the Camp I'll see that he signed his name to the statement.

(Testimony of Samuel P. McGregor, Sr.)

Q. At any later time, Mr. McGregor, did you have any conversation with Mr. Miles, Mr. Lee Chong, or anyone, concerning the Lee Chong account with the C. C. C. Camp?

A. Yes; I was at the office again on October 12th.

Q. By "the office" you mean the office of Lee Chong Company?

A. The same office, yes; when Mr. Miles came in, I believe, shortly after 10 or 11 o'clock.

Q. On October 12th?

A. On October 12th.

Q. What did he say there?

A. First remark—he came in—when he saw Mr. Lee Chong; "Mr. Lee Chong, I thought you were my friend, but you sure got me screwed tight"; that was in a smiling way, not in an angry way; "I thought you were my friend, but you sure got me screwed tight."

Q. What else was said?

A. I was rather surprised; and Mr. Lee Chong said, "Why yes, I am always your friend." "Well, if you're my friend, [644] why did you go and tell about a certain note that I have with you; you know I told you to keep that—"

Mr. MOORE: Just a minute; I object to that.

Mr. ULRICH: Just a minute; I wouldn't have you testify about that.

The COURT: Mr. McGregor, confine yourself to what Miles said and what Lee Chong said.

(Testimony of Samuel P. McGregor, Sr.)

Mr. ULRICH: Really, the witness is doing that.

A. That was the general conversation between them.

Q. Pass over whatever reference may have been made to this thing you just talked about, and go on with the rest of the conversation; what happened?

A. After they was quieted down he presented a check for payment.

Q. Presented a check for payment?

A. Yes.

Q. Do you know whether Mr. Miles had at that time already been removed as Director of the Camp?

A. No.

Q. What?

A. No, I don't.

Q. You don't know?

A. I don't know.

Q. You didn't know at the time?

A. I didn't know at the time.

Q. He presented a check; what kind of a check was it?

A. He presented a check for payment of the September account; and in going over the check, that is, Mr. Lee Chong and Monty came in, in going over the check there was a certain dispute; they were disputing that the sum of the check was not the sum of the statement that was rendered.

Q. Do you remember the difference between the check as [645] presented and the bill, or did you

(Testimony of Samuel P. McGregor, Sr.)

get into that discussion far enough to know what the controversy was?

A. Yes; the difference was $37.65, I believe; that was the amount that they were disputing; and another dispute was that they were asking where was the check of the $72.50.

Q. So far as the $72.50 is concerned, by that are you referring to this $72.50 on the separate bill that you have seen made out before?

A. Yes sir, I am referring to that bill.

Q. That was the keawe wood, and so forth, for the luau bill?

A. Yes sir.

Q. Is this the first time that you heard anything about any $37.65?

A. Yes, that was the first time I ever——

Q. What was said about the $37.65?

A. I asked Miles, "What is the discrepancy in the check?" And he told me that this $37.65 was paid erroneously sometime in June, that is, for the May account, so he is deducting it from the amount of the statement of September.

Q. What more was said about the way it was erroneous, or anything of that kind?

A. Well, he said it shouldn't have been paid; so I asked Mr. Miles, "Well, what seems to be the error in this $37.65?" "Well," he said, "It wasn't meant to pay during that month"; and I said, "Well"—I questioned him about it—"how do you intend to pay that bill?" He said, "I meant to pay it from the Canteen Fund." "Oh, I see; have you

(Testimony of Samuel P. McGregor, Sr.)

a Canteen Fund?" He said, "Yes." "You have a checking account?" "Yes." "Well, all you have to do," I said, "if you have erroneously drawn $37.65 from one account all you [646] have to do is to draw $37.65 from one account and refund the account where you have erroneously drawn."

Q. Instead of deducting it from Mr. Lee Chong's?

A. Instead of deducting from this check.

Q. What was done about accepting or not accepting the check with these deductions?

A. Well, Lee Chong refused to accept the check, on my advice; I told him not to accept the check until we have further discussion on it. Miles was in a hurry; he had another appointment at another place, so after that he left, and left us with no check at all, he packed the check along; and we made arrangements to meet him later in the afternoon of the same day at Schofield Barracks at the C. C. C. Camp.

Q. Then did you meet him later at Schofield Barracks that day?

A. So, that afternoon Lee Chong and I went to the C. C. C. Camp, and we got to the main office, where we saw miles there, and there was quite a disturbance in that locality; and I insisted on seeing Miles; I said, "Miles, we are here to straighten up"; and in the meantime the afternoon paper had been published, with big headlines "Miles resigns"; so we wanted to get everything settled; I was under

(Testimony of Samuel P. McGregor, Sr.)

the impression that he was getting things settled; so we got Miles over, Miles and myself and Lee Chong all filed into the C. C. C. Camp office there;——

Q. Who was there in charge then?

A. Beg your pardon?

Q. Who was there?

A. Mookini was in this building with the new gentleman that's in charge now; Mr. Yates.

Q. The new Camp Director? [647]

A. Yes, the new Director; he was introduced to me as Mr. Yates and as successor to Miles then; and I introduced myself and Mr. Lee Chong, and I told him that we were there to settle some payments of some accounts; and in the meantime Miles had gotten there before us and had turned over the check to Mr. Yates, and Mr. Yates recalled and said, "Is this the check?" "Yes". So, in the discussion I asked that the amount of the check was not correct and there is a short change of $37.65——

Q. More than that, wasn't it?

A. (continuing): and I had to go back; and Mr. Miles before leaving us in the office told me that a Mr. Colman had charge of his Canteen checking account and if we would come that afternoon it would be settled with the full amount by issuing a Canteen check for the short change of $37.65, and that we'll get also the $72.50 from the Canteen check.

Q. That is, the understanding was that you were to get this shortage from the Canteen Fund?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes, from the Canteen Fund; so I asked Mr. Miles, "Mr. Miles, where is the Canteen checks?" He said, "Mr. Colman is not here, I don't know where he's gone to, and I guess you have to wait until sometime later." So, with that unpleasant atmosphere in that particular moment, why, I decided to accept the check and on one condition, that we were accepting the check as part payment on the total of the bill; so I dictated—I asked Mr. Mookini if he couldn't make out a receipt, and I dictated the receipt;——

Q. How did you happen to have Mr. Mookini write out the receipt or take the dictation?

A. Mr. Mookini was sitting at a typewriter, so I went over [648] and asked hm if he wouldn't be kind enough to let me use the typewriter or he can take the dictation from me, so he took the dictation from me and he typed out the receipt; then I had Mr. Mookini to certify that it is the same receipt, and then I went over to Mr. Yates' desk and had him sign; and of course I had Lee Chong sign first; and we left the place immediately.

Q. I show you United States Exhibit "K", and also the Defendants' Exhibit 2, the one being a carbon copy of the other so far as typewritten matter thereon is concerned, and ask you whether or not you identify those as the original and carbon of the receipts that you dictated and had signed at that time?

A. Yes, this (indicating) is the original, and this (indicating) is the carbon where I had Mr. Yates sign.

(Testimony of Samuel P. McGregor, Sr.)

Q. And on the carbon which was taken back by Mr. Lee Chong there is the signature of Mr. Yates?

A. Yes sir.

Q. And of Mr. Mookini?

A. Yes sir; I left this at the Camp.

Q. And that (indicating) was left at the Camp?

A. Yes sir.

Mr. ULRICH: (showing document to jury): This is the same receipt to which your attention has been called before, acknowledging of all except the balance of 110 dollars.

Q. Mr. McGregor, in the course of your visits to the Lee Chong Company's place of business while this C. C. C. Camp business was under way, did you ever have occasion to see any of these people connected with the Camp at the Lee Chong Company place of business, drinking?

A. Yes sir. [649]

Q. What did you have occasion to see in that regard?

Q. Well, on several occasions I saw Mr. Cunningham with some liquid refreshment; I couldn't say whether it was gin, but it appeared to be gin—sometimes it's brown colored—and lots of chipped ice on the table; and sometimes Mr. Mookini is there with Mr. Cunningham at the table, they have the same thing.

Q. Did you have occasion to notice where the liquor came from, that is, the hard liquor, any gin or whiskey?

(Testimony of Samuel P. McGregor, Sr.)

A. I think they brought their own liquor; that is, I couldn't say, but I know that they brought their own liquor there.

Q. You have know Lee Chong for a great many years, have you not?

A. Yes sir.

Q. Does he drink at all, himself?

A. No.

Q. Did you ever see any liquor in the store there, kept by the store, in the nature of whiskey or gin?

A. No.

Q. What kind of liquor have you see there?

A. They always have Chinese liquor, in the big round bottle; sometimes I think it's oke; a sort of very mild, I don't know what you call it, Chinese wine; it's bootlegging oke.

Q. Did you have occasion to notice who was doing the real ordering of the groceries or things from Lee Chong Company, so far as you knew?

A. Yes sir.

Q. Who?

A. Mr. Cunningham.

Q. Mr. Cunningham?

A. Mr. Cunningham was represented to me as the man that [650] does all the buying; he frequently discussed with me how those boys out there eats a lot and they have a laborer's stomach, so naturally he would have to buy plenty.

Q. What about Mr. Mookini; did you see him around Mr. Lee Chong's place of business very much at all?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes sir.

Q. When?

A. Well, when he comes in and drops in, and then goes off, and comes in together with Cunningham for a little while, and he goes off; sometimes they come in together; that's the way they come in together; he uses a Packard car, and drops Cunningham there, and sometimes he stays a while.

Q. Who was there most—Cunningham, or Mookini?

A. Mr. Cunningham is there, well, sometimes twice a week, and sometimes more.

Mr. ULRICH: That's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. How long have you been working for Lee Chong?

A. Beg Pardon?

Q. How long have you been working for Lee Chong?

A. I didn't work for him.

Q. Well, you made out his income tax returns?

A. Yes, I do.

Q. You keep a few books down there, don't you?

A. Not books; just auditing.

Q. Just what?

A. Auditing their books.

Q. You get paid for that?

A. No sir.

Q. And for checking and advising Lee Chong, you don't get paid for that? [651]

(Testimony of Samuel P. McGregor, Sr.)

A. No sir.

Q. Not a thing?

A. No sir.

Q. You don't get any groceries for nothing?

A. Nothing; I pay for my groceries.

Q. In other words, you stop at Lee Chong's, and have been doing it for a number of years, helping him make out his income tax returns, auditing his books, and advising him in business transactions, and you never charge him something for it?

A. No sir.

Q. And he's never given you any remuneration of any kind whatsoever?

A. Well, given remuneration—there's no money remuneration; sometimes we get vegetables, and that's all.

Q. Does he furnish you with all the vegetables?

A. Not furnish; whenever there's left over, what you call, too much of one kind, he says, "I have too much of this here, and you can have it", and I take it; otherwise I pay for everything I get.

Q. You know Mr. Deville here, don't you?

A. Yes, I certainly do.

Q. Do you remember having a conversation with him down at Pearl Harbor?

A. Yes sir.

Q. About November 1st?

A. About that time, I guess.

Q. Do you remember he asked you a question about this September luau of the Civilian Conservation Camp?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes sir. [652]

Q. And you told him they held this luau about September 1st?

A. Sometime in there.

Q. You told Mr. Deville that?

A. September 1st?

Q. Yes, 1934.

A. My mind must have been fresh at that time when I told him "September 1st", and it must be so.

Q. And do you remember telling Mr. Deville that you saw them in Lee Chong's store—that is, by "them" I mean Mookini and Cunningham—a couple of days before this luau?

A. Yes.

Q. You told Mr. Deville that?

A. Yes.

Q. And you told Mr. Deville, didn't you, that Mr. Cunningham had the list of goods that were needed, but that Mookini did the ordering?

A. No, I did not.

Q. You didn't say that at all?

A. No, I did not.

Q. You also told Mr. Deville at the time of this conversation I have just referred to that you heard no mention at that time as to how the goods or the order of this luau was to be charged?

A. No.

Q. You didn't say anything of that kind?

A. No.

Q. Well, you testified here a little while ago that upon the occasion that you went in there when

(Testimony of Samuel P. McGregor, Sr.)

Mookini and Cunningham were talking about these articles for a luau, that you didn't hear at that time anything mentioned how the goods were to be charged?

A. No, I didn't hear; that's when the discussion was on the [653] quantity of the different articles.

Q. What I'm asking you, didn't you tell Mr. Deville that these goods were not to be charged to any particular account?

A. No, I did not.

Mr. ULRICH: Are you asking this witness whether he told Mr. Deville about whether there was a discussion about how the goods were to be charged, or, that there was nothing said about how the goods were to be charged?

Mr. MOORE: I asked this witness about three times now if he told Mr. Deville that when Mookini and Cunningham came in and discussed this luau affair, that is, when he was speaking to Deville about this, didn't he tell Deville that there was nothing mentioned as to how the goods were to be charged.

Mr. ULRICH: If the witness understands the question.

A. That was at the time we were discussing on the quantities.

Mr. MOORE: Did you tell Deville that there was nothing said as to how the goods were to be charged?

A. Nothing was said.

Q. You didn't tell Deville that?

A. I told Deville.

(Testimony of Samuel P. McGregor, Sr.)

Q. You told Deville?

A. I told Deville that there was no discussion about how the thing was charged; at that time we were discussing on the quantities of the luau; I didn't meet him after.

Q. Do you know what day of the week it was?

A. Beg pardon?

Q. Do you know what day of the week it was this discussion you tell about? [654]

A. I couldn't recall; it was some week or ten days before the luau took place, anyway.

Q. It was immediately preceding the luau?

A. It was what?

Q. It was within a day or two immediately preceding the luau?

A. No.

Q. You were out at the luau yourself, weren't you?

A. I was invited there, yes.

Q. I am asking you, were you out there?

A. I was out there, yes sir.

Q. You were invited out there by Mr. Mookini, were you not?

A. Yes sir.

Q. And Mr. Lee Chong was out there?

A. Mr. Lee Chong was there.

Q. And his family?

A. And his family was there.

Q. Now, you say the next time you heard anything about this luau affair was on the 4th or 5th of October?

(Testimony of Samuel P. McGregor, Sr.)

A. I didn't hear any more about the luau affair on the 4th or 5th, but the discussion came up when Miles came in.

Q. Well, that was about this luau order, wasn't it?

A. No, about these charges.

Q. Well, isn't that the bill for the luau?

A. I guess so.

Q. And you say at that time this document, which is United States Exhibit "J", was made up at Miles' request?

A. Yes, in my presence.

Q. And you saw Monty Roque type it out?

A. Yes, he typed it there. [655]

Q. And on that particular day he put the word after "Camp", that is, the word "Canteen" after "C. C. C. Camp"?

A. Yes sir.

Q. And you're sure it was on the 4th or the 5th?

A. It was on that day.

Q. That is the first time that you saw Miles in Lee Chong's office after this luau?

A. Yes, sir, after the luau.

Q. And that the next time you saw Miles in Lee Chong's office was the day he came down with the check?

A. Yes sir.

Q. And the check was short two amounts—37 dollars something, and $72.50?

(Testimony of Samuel P. McGregor, Sr.)

A. Yes sir. You see, the check was short of $37.65, but the $72.50 was on the separate account, we expected to get a different check for that.

Q. What you refer to when you say that the check was short $37.65, you mean $37.65 short of the total amount that appears here on United States Exhibit "H"; you'll see that the difference between these two documents, that is, "G" and "H", is $72.50, you see the difference in totals there?

A. Yes.

Q. And that this amount, that is, instead of getting a check for $454.10, it was that amount less $37.65?

A. No; this is only a statement for that one order; the statement that I referred to is for the whole month.

Q. That's United States Exhibit "I", that is this one here (indicating); you see that there's $37.65 taken off?

A. Yes.

Q. And that comes in this particular luau bill? [656]

A. That $37.65 was not in this luau bill at all.

Q. Oh yes, you're right. Do you know what day of the week it was that you say you were in there on October 4th or 5th?

A. I couldn't say what day of the week.

Q. You say you were in there on October 12th; do you know what day of the week that was?

A. Yes; I was there October 12th.

(Testimony of Samuel P. McGregor, Sr.)

Q. What day of the week?

A. I couldn't say whether it's a Friday or a Saturday.

Q. Well, how do you know at this time that it was October 12th?

A. How did I know——

Q. How do you know at this time that that particular day was October 12th?

A. Well, because I had referred to my receipt that I dictated to Mookini.

Q. And that's the only way you remember?

A. Well, I know it was October 12th.

Q. You have an independent recollection, then, that it was October 12th?

A. It was October 12th.

Q. Do you have any independent recollection of the exact day it was, either as to the date of the month or the day of the week that this conversation took place between Mookini, Cunningham, and other members in the store as to the quantities for this luau?

A. I don't remember what day of the week it was, but I know it's a week or ten days before the luau.

Q. You don't know the date of the month, whether that was the 20th of August, or the 29th of August, or the 27th [657] of August, or what it was, do you?

A. What do you want me to answer?

Q. You don't know the exact date, do you?

A. No, I couldn't tell you the exact date.

(Testimony of Samuel P. McGregor, Sr.)

Q. You say that you've seen a lot of these C. C. C. men in there drinking at Lee Chong's place?

A. I didn't say "a lot of C. C. C. men"; I saw Cunningham, and at times I saw Mr. Mookini, and on one occasion I think I saw Miles.

Q. Did you ever see Colman?

A. Colman—I don't know who he is.

Q. You don't know who Colman is?

A. No.

Q. Did you ever see anybody else come in with Mookini or Cunningham or Miles?

A. Well, in one instance I saw a Korean boy or a Chinese boy; that's only in one instance.

Q. And they had a drink, then?

A. Well, they were drinking something.

Q. Well, it wasn't buttermilk, was it?

A. Beg pardon?

Q. It wasn't buttermilk they were drinking, was it?

A. Well, I don't know; you see, the office is separate; I pass there and I know this crowd is in there and I go about my business and go out.

Q. But you say that you know that these men bring their own liquor in there, is that right?

A. I do.

Q. And how do you know that?

A. Because I seen Cunningham, myself, coming in with a bottle in his pocket. [658]

Q. With a bottle; was it wrapped, or unwrapped?

A. Unwrapped.

(Testimony of Samuel P. McGregor, Sr.)

Q. Unwrapped?

A. Yes. He invited me to have a drink; I says, "No, thank you."

Q. Any other occasions you ever see anybody take a bottle in there?

A. Well, on another occasion I know the bottles is already there; I didn't see them taking it there.

Q. And you say, because you saw Cunningham go in there one time with a bottle, that these fellows always brought their liquor in?

A. Well, he's a frequent spectator there, and that's why on one occasion I saw him bring his own liquor there.

Q. And on many other occasions you've seen him drinking in there, isn't that right?

A. Yes.

Q. Did you ever go over there to see what they brought, or anything like that?

A. No.

Q. Never did?

A. No.

Q. Well, you testified, I believe, that Lee Chong Company never bought any liquor except Chinese wine, or something; that's what you told us?

A. Not Lee Chong; the store; that is, Mr. Chun Yau Chee always had Chinese liquor there for the workmen.

Q. What time do you go to work at Pearl Harbor?

A. When I first started?

(Testimony of Samuel P. McGregor, Sr.)

Q. Now, last year.

A. What time I go to work? [659]

Q. Yes, go to work.

A. I report at my office 7:45.

Q. And you're through at what time?

A. 4:15.

Q. And during that entire time you're employed at the Pearl Harbor Navy Yard?

A. Yes sir.

Q. And last year how much vacation did you get?

A. Something like three weeks, I believe.

Q. Then you were never at Lee Chong's store during this period from the first of April to some time, well, through the month of October,——

A. Well, I was there——

Q. Now wait a minute; through the month of October until after you got through work, with the exception of that time you were on vacation?

A. Yes sir. Now that's not speaking of Saturday and Sunday, on which I don't work, I am there.

Q. Saturday and Sunday?

A. Yes, I don't work on Saturday and Sunday.

Q. Do you go there every Saturday and Sunday?

A. If I happen to drop in there when I have nothing to do, coming back from doing my marketing; occasionally there Saturday and Sunday, but that's not because of Saturday and Sunday.

Q. You make this place a sort of hangout?

A. It's not a "hangout" for me; it's the place where I go and do my marketing and stop for my vegetables.

(Testimony of Samuel P. McGregor, Sr.)

Q. And on each occasion, each day, as I understand it, your family comes there and picks you up and takes you home?

A. Yes sir. [660]

Q. There isn't any other place in town that you do that thing, is there?

A. No.

Q. And you have been friendly with Mr. Lee Chong for a long time, haven't you?

A. I know him ever since he was a boy working for his father.

Q. You say that Cunningham was in there twice a week, sometimes more?

A. Yes sir.

Q. And what time of day would you see him?

A. This is always after 4:30.

Q. After 4:30?

A. Yes sir. When it's early it's on a Saturday.

Q. You say you have done auditing down there; how many bookkeepers have they got?

A. How many bookkeepers have they got?

Q. Yes, how many sets of books do you go over?

A. Well, I only get a set of books when it's interpreted to me from Lee Chong's son when we go over.

Q. You don't audit the books that Roque keeps?

A. No, that's the Chinese work.

Q. What?

A. No; the Chinese book.

Q. You don't audit Monty Roque's books?

(Testimony of Samuel P. McGregor, Sr.)

A. Why, Monty is only a clerk that takes down what you call orders and makes up statements; he's not a bookkeeper.

Q. In other words, the Chinese give to you the figures from their Chinese thing, and you make up the tax returns, it that it?

A. Yes sir, I do. [661]

Mr. MOORE: That's all.

Re-Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Just one question: When was it you said you had your vacation last year?

A. During the month of October.

Q. Beginning about when; the first of October, or——

A. Shortly after the first.

Q. You've testified to the time of the conversation in Mr. Lee Chong's office about the 5th of October, when Miles came in there and talked over the telephone to the Camp, and so forth; were you on your vacation at that time?

A. Yes sir.

Q. And were you still on your vacation on the 12th, when these other conversations took place?

A. Yes sir.

Mr. ULRICH: That's all.

Mr. MOORE: No further questions.

ROBERT K. MOOKINI

being duly called and sworn as a witness in his own behalf, testified as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Your name is Robert K. Mookini, is that right?

A. Yes sir.

Q. You are one of the defendants in this case?

A. Yes sir.

Q. How old are you, Mr. Mookini?

A. 35 years old.

Q. Are you married, or single?

A. Married. [662]

Q. Any children?

A. Yes; I have a boy attending St. Louis College.

Q. You have been connected with athletics very considerably here in the Territory, have you not?

A. Yes, I have.

Q. What have you done in that regard?

A. Done officiating since 1923 in the major leagues here; football, basketball, track, swimming, boat races; in 1918 I was clerk of the course for the horse race meet at Waikiki; I have done mostly officiating.

Q. You have made trips to the Mainland with some of these teams?

A. I left here with the Hawaii J. O. G. squad in 1932 for the Olympic Games.

Q. What school did you graduate from?

(Testimony of Robert K. Mookini.)

A. McKinley High School.

Q. And what business have you been in since you graduated?

A. While attending high school, during my sophomore year, I entered the employ of the Consolidated Amusement Company as apprentice in projection.

Q. Did you continue in the employ of the Consolidated Amusement Company?

A. I continued with them until 1933, putting in 17 years of service with them, through all sorts of work.

Q. Principally what was the nature of your work with the Consolidated Amusement Company?

A. I handled the exclusive distribution of films throughout the Territory; in fact, I was their film man, I handled the whole thing beginning with the distribution. [663]

Q. Was your employment with the Consolidated Amusement Company the last employment that you've had in the Territory prior to taking up the work that you took up with the C. C. C. Camp?

A. Yes sir.

Q. When were you first appointed by the C. C. C. Camp or the authorities there?

A. January 29th, 1934.

Q. How did that come about?

A. Several days prior to the day of my appointment I happened to meet a friend up town, and he told me, "Bob, they're looking for a recreation offi-

(Testimony of Robert K. Mookini.)

cer or quartermaster officer at the Capitol Building"; so I dropped in there and I inquired who I was to see, and was referred to Mr. J. W. Lloyd. I walked in and told him that I was an applicant if there was any vacancy available and I gave him my name. He looked at me; "Are you Bob, the football referee?" I says, "Yes." He says, "That's all; I'll let you know in a couple of hours or tomorrow." The following day he called me up and told me to come down, so I came on down, and he told me, "You have qualifications for recreation officer; the Governor just told me you are a good disciplinarian; he recognized your name and wanted to make sure if you were the football referee, and I said yes."

Q. Who was the Governor of Hawaii at that time?

A. Governor Judd.

Q. Lawrence Judd?

A. Yes.

Q. Did you take—were you appointed at that time?

A. I was appointed January 29th; that was two days later. [664]

Q. And did you go out to the Camp immediately?

A. I went out to the Camp on February 13th to supervise the construction of the mess hall and the barracks and the sleeping quarters for the men.

Q. At the time when you first went out to report for duty at the Camp, who was the Camp Director?

A. Major Mahaffy.

(Testimony of Robert K. Mookini.)

Q. When, if you know, did Mr. Miles become Camp Director?

A. Mr. Miles became Camp Director on about April 16th.

Q. Not until April 16th?

A. Yes sir.

Q. When Mr. Miles, however, joined the force out there at the Camp he was assistant director something or other, was he not?

A. Yes sir.

Q. When?

A. Well, I remember February 1st he was with us in the office at the Capitol Building; the date of his appointment I don't know; he may have been appointed a couple of days before the time I went to work with him.

Q. The Camp, I understand, started about the 12th or 13th of February?

A. No; the preliminary setting up of the Camp started around February 13th, but the Camp really got into operation March 6th.

Q. You were out there at that time, from the beginning?

A. From the beginning; I moved the first contingent out there from Honolulu.

Q. Your office, as I understand, was first "recreation officer"?

A. Yes sir. [665]

Q. Do you recall when Major Mahaffy left the Camp and Captain Miles became Camp Director?

A. Yes sir, I do.

(Testimony of Robert K. Mookini.)

Q. When was that?

A. April 16th. They were having a lot of trouble then; I saw in the papers that Mahaffy was let go and Miles as Camp Director to take charge April 16th, and that was further confirmed by Mr. J. W. Lloyd.

Q. I believe there was a time when, in addition to your duties as recreation officer, you were given certain duties in connection with the Mess?

A. Yes; I had various other duties outside of that Mess work.

Q. When were these duties in connection with the Mess given to you?

A. The latter part of March, around the 22nd or the 23rd; and during that time Mr. Miles came over and told me, he says, "Bob, we're running behind; have you any suggestions how we can keep this Mess from going in the hole?" I was taken—my duties were to condition the men; during that period my time was taken up from half past five in the morning until half past six in the evening. I told him, "Check your storeroom and find out how much canned stuff you've got; then one way you can do it is to run your supplies down and limit your unnecessary purchases and try and run it down." He followed out that advice of mine as I suggested, and they came out with a saving of $344.87, something like that. Prior to that time Major Mahaffy came to me, around the same period, and said, "Bob, if we don't save any money it means I've got to pay

(Testimony of Robert K. Mookini.)

out of my pocket; my month's pay check will have to be taken by the finance officer at Fort Shafter." [666]

Q. Was Major Mahaffy still there at the time you began the duties in connection with the Mess?

A. Yes sir.

Q. What did you do—it's generally been spoken at this trial that you held office as Mess Officer or something of that kind; just what were your duties, and what did you do in connection with the Mess?

A. Inspect the fruits and vegetables, meats, superintend the feeding to see that the boys got enough to eat, and the food prior to being served, *to had* to go in there and find out whether they had put in their proper—sometimes I have to check up whether fresh stuff had gone into the meals; in other words, that there was nothing like trying to camouflage old meat in the stew; it was my duty to see that their stuff was first grade in the meals.

Q. So far as the actual placing of the orders for the stuff that was shipped out there to the Mess, as a usual thing did you have anything in particular to do with that?

A. No; although I was Mess Officer, that all was delegated by Miles to Cunningham, being the chief steward.

Q. Did you on any occasion order the goods for the Mess?

A. Yes; in October; when Miles was let go, with Cunningham.

(Testimony of Robert K. Mookini.)

Q. Cunningham and Miles went at the same time?

A. Miles went first.

Q. And you remained on there after they had gone?

A. After Miles was given the privilege of resigning, I was made Acting Camp Director pending the appointment of Mr. Yates.

Q. And you did some ordering; that would be in October some time?

A. Yes sir. [667]

Q. Then there came a time when this investigation was commenced, when you yourself were suspended out there?

A. I was suspended a week later.

Q. Mr. Mookini, did you ever know Mr. Lee Chong here prior to the time that he commenced to deal with the C. C. C. Camp?

A. I never knew there was a Company as Lee Chong Company, I didn't even know a Company existed by that name.

Q. When was the first occasion you had to meet Mr. Lee Chong?

A. I met Mr. Lee Chong out there some time in April; I presume it was about the first week of April. I happened to come in the office there, and there was Cunningham, Lee Chong, and Miles;——

Q. By "the office" you mean the Camp office?

A. The Camp office out at Schofield Barracks; and Miles called me over and he says, "This is Mr.

(Testimony of Robert K. Mookini.)

Lee Chong, who will furnish us all our fresh vegetables and fruits." I turned around to Lee Chong and says, "What we want is quality;" I says, "God help you if you give any cumshaw to anybody."

Q. During the time, after Mr Lee Chong had commenced delivering goods out there, during the month of April—well, the remainder of the month of April, we'll say, do you recall that you had occasion to go over to Mr. Lee Chong's place of business at all?

A. I came in with Mr. Cunningham about that time, around that month, too; we were on our way to the Metropolitan Meat Market; we tried to get some hamburger—this is the way it is; hamburger at the Post Exchange they want 18 cents a pound for it, either that or we had to buy a quarter [668] carcass at 13 to 14 cents a pound and had to make our own hamburger, but we didn't have any equipment out there; at the same time, Miles wanted to have some of this stuff; so Miles told Cunningham and I to go down to the Metropolitan; and on our way up we stopped at Lee Chong's for prices and wanted to know if there was any fluctuation of prices at any time of his goods.

Q. Do you remember the Mothers' Day dinner?

A. Yes sir.

Q. That was before that?

A. Yes sir.

Q. So far as you can recall, were you ever in Lee Chong's place of business at any time before that, excepting that time about the hamburger?

(Testimony of Robert K. Mookini.)

A. No, only that time. I'll clarify this more; although I was assisting with the Mess out there, I had several other duties to perform outside of that; I had the Camp policing out there, I had to see that the men got their sick leave, and had to tend to the rooms out there where I had to break down and assign the men to the various tents; as Camp director on top of that I had to see that the men's luncheons were delivered to the outside field.

Q. Now, Mr. Mookini, do you recall any discussion out there at the Camp relative to a Mothers' Day dinner that was contemplated at any time before the dinner was had?

A. Yes, about the first week of May.

Q. Along about the first week of May. Well, who participated in the conversation and what was said at that time, as nearly as you can recall?

A. Cunningham came over to Miles and I that was in the office, and Cunningham suggested that Mothers' Day was [669] sort of a semi-holiday, or something to that effect, and wanted to know if Miles would agree to having a celebration out there, being that the boys were all from town. Well, we thought it was a good idea, and Miles told me, "Help on this dinner and you handle the entertainment and the athletic program; in the meantime I'll try and get Acting Governor Brown to come on down here and give us a talk on Mothers' Day." So Cunningham spoke up, and he says, "By the way, we'll have a lot of candy and fruit and all that stuff; it would

(Testimony of Robert K. Mookini.)

look good if the boys could take it right after the meal and sit around with their parents; and the only way you could do it is to put it in paper plates and paper cups." So Miles says, "We can take care of that by having it put in as vegetables." "Captain," I says, "I think you're wrong; you better check that up." I walked away; I says, "You better check that up before you do anything like that;" then something called me out to do some other work, and I left. That's all that happened at that time, so far as Mothers' Day dinner was concerned.

Q. Was that Miles' suggestion, that they might buy paper plates and put them as vegetables, but you said you didn't think he could do that but he better check it up, and you went away?

A. Yes sir.

Q. Anything said about flowers, or do you recall?

A. Yes; the subject of decorating the mess hall came up, about getting flowers, but I didn't pay any attention; I had gone.

Q. Mr. Mookini, did you have anything at all to do personally with placing that Mothers' Day order? [670]

A. I did not.

Q. Were you over in Lee Chong's place of business at any time prior to the Mothers' Day dinner, even talking about the Mothers' Day dinner?

A. No.

(Testimony of Robert K. Mookini.)

Q. There's been testimony in this case about a conversation at which you were present with certain persons there prior to the luau; do you recall that conversation?

A. Yes, I do.

Q. That took place?

A. Yes.

Mr. MOORE: What conversation do you refer to?

Mr. ULRICH: Referring to the one in which McGregor was telling about what they had on the luau.

Q. No preliminary conversation before Mothers' Day program at all?

A. No.

Q. Now, to stop for a moment and take up another line: You heard Mr. Cunninghm testify in this case, didn't you?

A. Yes.

Q. You heard him testify to the effect that during the months of April, May, and June you got groceries for yourself on personal account from Lee Chong's and had them camouflaged in the C. C. C. Camp bills; you heard that testimony?

A. Yes, I did.

Q. Is there a particle of truth in that testimony?

A. Well, he's not telling the truth; I can use words stronger than that, but he's not telling the truth.

Q. Did you ever have any conversation with Mr. Cunningham in Mr. Lee Chong's presence, or any-

(Testimony of Robert K. Mookini.)

where else, where the [671] matter of Cunningham's OK'ing bills in which your personal groceries were to be camouflaged on C. C. C. Camp bills, was discussed?

A. I never had any such conversation.

Q. Was there ever such a talk at all?

A. No.

Q. Was there ever a time when a matter of that kind was discussed between yourself and anybody?

A. No.

Q. Did you ever hear it suggested that there was ever such an item in anybody's mind until you heard this witness Cunningham testify on the stand?

A. I never made any such conversation; that's the first time I heard a thing like that, was on the stand.

Q. It has been testified by Mr. Cunningham that during the month, I believe it was the month of June, you took over a hundred dollars worth of groceries of your own and had them charged on the C. C. C. Camp bill; you heard that testimony?

A. Yes, I did.

Q. What was happening in your home in the month of July?

Q. I had my wife in the hospital; she was operated on.

Q. Did you use any such amount of groceries as a hundred or more dollars worth in that month?

A. No; my wife does the buying for that house.

Q. Or any month, for that matter?

(Testimony of Robert K. Mookini.)

A. No, never.

Q. You testified that you had nothing to do with the giving of the Mothers' Day order. Were you there when the Mothers' Day order was delivered?

A. No, I was not.

Q. The testimony in the case has been to the effect that the Mothers' Day order was delivered on the morning of [672] *of* the day before Mothers' Day?

A. I was not there.

Q. Mr. Gunningham, I believe, testified to the effect that you were at the mess table having your breakfast at or about the time that that order arrived, and that he brought a bill in to you on the mess table there; is that true?

A. No.

Q. Were you having your breakfast at the Mess out there that morning?

A. I always have my breakfast right after the calisthenics hour, that's half past five; at six o'clock I have breakfast.

Q. Will you remember, if you can, what you were doing on that day, the day before Mothers' Day, in the morning?

A. The day before May 12th orders were issued by Captain Miles that our trucks were to be serviced; a periodical inspection of trucks; because they were carrying the men to and from the field work; so I occupied the first half of the morning up to Wahiawa Service Garage.

(Testimony of Robert K. Mookini.)

Q. So that, when the Lee Chong order arrived you weren't even in the Camp, to the best of your recollection?

A. No; I didn't even know the stuff was there.

Q. Mr. Cunningham has further testified to the effect that you were there, that he went over and told you that he had some liquor for you;——

A. Yes I heard him say that.

Q. (continuing): and that later that evening you told him to bring it over to your tent, and that later that evening he brought a package of liquor over to your tent, containing 3 bottles of whiskey and 3 bottles of gin; you heard that testimony? [673]

A. I heard him say that.

Q. Is there a particle of truth in that testimony?

A, He's lying.

Q. Did you ever get any liquor from Mr. Lee Chong?

A. No sir.

Q. Either as his guest or by way of purchase?

A. No.

Q. Whatever liquor you may have had in your tent at any time was gotten where?

A. I bought it myself; in fact, I had liquor at all times.

Q. So far as you can recall, at or about the time of this Mothers' Day dinner did you have any liquor in your tent?

(Testimony of Robert K. Mookini.)

A. In fact, we had it from the day we went out to the Camp.

Q. You did have liquor there from the time you went out to the Camp?

A. Yes.

Q. Where did you get your liquor as a rule?

A. I would get it from the Waikiki Liquor Store; get it from the Tacoma Brewing, over here; get it at the Chinese store at the corner of Maunakea and Hotel.

Q. Mr. Cunningham has testified to the effect that these bottles of gin, as I remember his testimony, were Manila Gin; is that right, Mr. Moore?

Mr. MOORE: Yes.

Mr. ULRICH: Did you ever have any Manila Gin?

A. That's the first time I have known about Manila Gin was when Cunningham gave me a drink of it.

Q. Was that the kind of gin he used to have?

A. Yes, he used to drink a lot of that; and Holly Gin.

Q. Did you ever have any Manila Gin in your tent, so far as you remember? [674]

A. No; I had Boston Gin.

Q. There's a little boy, not yet 21 years old, a young fellow—you know his name?

A. Lloyd?

Q. Who testified to the effect that he had helped carry that liquor, as I recall it, and that the next

(Testimony of Robert K. Mookini.)

day—which would have been Mothers' Day, by the way——

Mr. MOORE: The day after.

Mr. ULRICH: (continuing): you called him into your tent and gave him a drink, or, I believe he said, "a shot" of gin?

A. The day after Mothers' Day?

Mr. ULRICH: I think that was the evidence.

Mr. MOORE: As I recall it.

Mr. ULRICH: Yes, the day after Mothers' Day.

A. It couldn't be; I was not in Camp.

Q. You were not there in Camp?

A. No; I left there about 7:30 in the morning.

Q. Where were you the day after Mothers' Day?

A. I came in to take my wife to the Clinic.

Q. You mean Guy Milnor and these doctors over here?

A. Yes.

Q. And you were not at the Camp all day?

A. No; that's when I got the bad news that my wife had to be operated on as soon as possible.

Q. Did you ever give that boy a drink in your tent?

A. I did, just before I left Camp at the termination of my service out there.

Q. What happened on that occasion? [675]

A. I told him to help me pack my suitcase, and after I looked in my suitcase I had about less than a third of a bottle of gin, so I told him, "Here, I

(Testimony of Robert K. Mookini.)

am leaving the Camp; if you want a drink you can have this bottle." He told me, "Well, I'll drink it before supper"; so he took the bottle and put it in the bushes back of Captain Miles' tent.

Q. Is that the only time that you ever gave that boy a drink in your tent?

A. In my tent.

Q. Well, did you give him a drink anywhere else at any time?

A. Well, I meet the boys up town, maybe having a glass of beer at the Young Bar here.

Q. I mean out at Camp there?

A. No.

Q. There has been testimony to the effect, as you have heard it, that a day or so after the Mothers' Day dinner you came in to Mr. Lee Chong's place of business and were handed certain bills or invoices, which you OK'd at the request of Mr. Roque, I believe it was; do you recall that incident?

A. Yes, I do.

Q. First, before—I'll withhold that question for a moment. I show you the Government's Exhibit "C", which it has been testified is the original bill that went out with the Mothers' Day order;——

Mr. MOORE: That's a copy of the original.

Mr. ULRICH: The carbon copy of the original bill that went out with the Mothers' Day order. Mr. Lee Chong's testimony has been that he had

(Testimony of Robert K. Mookini.)

the original bill signed by Mr. Cunningham after he had checked off the goods delivered, and [676] left the carbon copy with him. Showing you Government's Exhibit "C", I call your attention to the fact that your signature apparently appears on that bill, and I'll ask you to state when and under what circumstances you placed that signature there?

A. It's a matter of form out there before we place on the files.

Q. It's a matter of form before it's placed on the files?

A. Yes. It may have been about five or six days later, or before the next audit of the supplies out there.

Q. Mr. Cunningham's testimony was to the effect that he took it to you while you were sitting at the breakfast table and that you OK'd it; you heard that testimony?

A. Yes I did.

Q. That is not true?

A. No, I didn't sign any document.

Q. As a matter of fact, you got this after he had placed it on the file?

A. He takes in all those bills, those invoices, first; then, maybe about two or three days later, he'll bring it down and place it on our desk, either in Miles' basket or mine. In looking it over and seeing some has no signature, as a matter of form we sign it.

(Testimony of Robert K. Mookini.)

Q. That is, the understanding was when he brought those invoices and filed them that they were already signed?

A. Yes.

Q. If he didn't sign them, you signed them?

A. Yes; we thought it was an oversight on his part.

Q. You hadn't even checked or attempted to check the contents of the document?

A. No. [677]

Q. Now I show you United States Exhibit "D" and Exhibit "E", being the documents which it has been testified to by Mr. Roque were changed at Mr. Cunningham's direction; and calling your attention to the signatures on those documents, and ask you to state to the jury the circumstances under which you signed those writings?

A. I remember signing it at the Lee Chong office after I had returned from the Clinic and been informed by Dr. Milnor that my wife had undergone a serious operation; I come down to the market purposely to get something for the house for supper; and as I walked in there Roque handed me this; I didn't know what it was; I said, "What's this?" He said, "Cunningham came in"; so I signed it; but when just about to sign it I turned around, and Cunningham had come in there; I didn't know he had been there; I said, "Is this thing O. K., Jack?" He said, "Yes, it's all O. K."; so I signed it and put it back on the table.

(Testimony of Robert K. Mookini.)

Q. When you first went in there Cunningham hadn't yet come?

A. Yes.

Q. And he came while you were being handed this?

A. Yes. I didn't know there was anything wrong until September 13th, when Mr. Lloyd informed me about it.

Q. Well, at the time you didn't go over the items of this thing?

A. No, I did not.

Q. You just took Cunningham's word for the fact that it was O. K.?

A. Yes.

Q. You signed one with your signature, and then you just hurriedly OK'd the other? [678]

A. Yes.

Q. Do you know what happened to these documents after you signed?

A. Cunningham picked it p.

Q. Cunningham picked up what?

A. He held it in his hand, and he was going back to Camp; I don't know whether he did or not, but I know I left it there and Cunningham had it in his hand; so I left the Lee Chong Company.

Q. And, as I understand, it wasn't until along in September some time that your attention was called to anything having to do with the contents or changes or anything in this stuff?

(Testimony of Robert K. Mookini.)

A. Yes, when Mr. Lloyd informed me that charges had been filed against me by somebody; he wouldn't mention the name.

Q. Mr. Mookini, you've heard the testimony of Mr. McGregor and, I believe, possibly another witness, in effect that a short time before the luau or Labor Day——

Mr. MOORE: Just a minute; I object to the form of that question,—I see how it's going to be proposed—as leading and suggestive. I think that this witness is perfectly capable of testifying without telling him what somebody else said.

Mr. ULRICH: I don't have to tell him; he's been sitting right here; this isn't a case where we're bringing a witness from the outside. I am just trying to conduct the examination as clearly as possible. I think it's perfectly proper, asking him for his version of it.

Mr. MOORE: I'll submit it. [679]

The COURT: Was the question completed? I didn't understand it.

Mr. MOORE: No, the question wasn't completed, Your Honor.

Mr. ULRICH: No. I was calling his attention to certain testimony, and asking for his comment on it; I don't believe I had finished.

Mr. MOORE: May it please the Court, that's just exactly what we should obviate—to call attention to what somebody said.

(Testimony of Robert K. Mookini.)

Mr. ULRICH: All I wanted to do was to save time. It will be quicker to withdraw the question and put it another way.

Mr. MOORE: All right.

Mr. ULRICH: Mr. Mookini, do you recall a conversation prior to the luau—you recall the luau, do you, in September?

A. Yes, September 1st.

Q. A conversation prior to the luau, at which there were present yourself and certain other persons, at Mr. Lee Chong's place of business?

A. Yes; Cunningham, myself, and McGregor; I don't know whether Lee Chong was there.

Q. What about this man Roque, the bookkeeper; do you know whether he was there?

A. I don't think he was there.

Q. Well, did anything in particular happen then—what did happen?

A. Well, when we were there the subject of the luau was brought up there; that was the early part of August—anyway, it was about two weeks before the luau, something like that, where Miles had intimated about giving a blowout out there on account of the termination of the six months [680] period which would have occurred on September 6th, so he suggested a luau. Well, we figured out we'd have to have some estimate how much it would cost to put on a luau, so while Cunningham and I were there and talking about this luau, McGregor in-

(Testimony of Robert K. Mookini.)

formed us that some of the quantities were too much and some were too little; then an argument ensued between Cunningham and McGregor as to the proper procedure in putting on the luau.

Q. In other words, there was talk about what you should have for the luau?

A. Yes, about an estimate.

Q. And McGregor was telling them how much?

A. Well, McGregor said, "I ought to know; I put on a lot of luaus."

Q. Well, was any order placed at that time?

A. No, no order placed.

Q. Anything at all said about the way in which anything was to be charged?

A. No.

Q. As a matter of fact, Mr. Mookini, did you have anything at all to do with the placing of the luau or Labor Day dinner order?

A. No I did not; I had the hauling of it.

Q. What was the sole contract, did you say, that you had with that order?

A. I was sent in with a truck by Mr. Miles.

Q. You went in with the truck?

A. Yes; I came on the Camp station wagon, and the big truck came in with a couple of helpers and Cunningham. [681]

Q. That is the day that the luau order was delivered to the truck?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. At Mr. Lee Chong's place of business?

A. Yes sir.

Q. Were you around there all the time while they were loading the truck?

A. I had to appear in the Police Court for a traffic violation, and I got soaked a $5.00 fine.

Q. What kind of a violation?

A. Boulevard stop at King and Kapiolani, I believe; I forgot to make a stop, and got pinched, so I had to appear in Court.

Q. So you came in with the truck and then went to the Police Court to see about this traffic violation?

A. Yes; they had a long calendar; in fact they issued a penal summons; I couldn't get in there to make an appearance; so I had to make an appearance there.

Q. And you were fined $5.00 for failing to make a boulevard stop?

A. Yes.

Q. Did you have anything more to do with taking the goods out to Camp?

A. No, I returned myself after that.

Q. Did you ever have anything to do with checking over the goods to see what goods were delivered or weren't delivered?

A. No sir. While I wasn't there the boys did the checking.

Q. Did you have anything at all to do with charging it, one way or the other? . .

(Testimony of Robert K. Mookini.)

A. No; Miles took complete charge of it. [682]

Q. When was the first time that you knew that there had been any changing or manipulating of this luau bill at all?

A. The day before the Primary election.

Q. What day was that?

A. About October 5th; I happen to remember that day, it was my wife's birthday.

Q. Where were you that day?

A. I was at the Camp.

Q. What happened.

A. I was at the Captain's station, I went over there to get some paper, and I looked out the door there, and there was Lee Chong coming; it was around, I should say, 7:30 or 8 o'clock;——

Q. In the morning?

A. In the morning. I said, "What are you doing here?" He said, "I want to see Captain Miles." I said, "Captain Miles gone to town half an hour ago; can I do anything for you?" He says, "Oh, he tell me to bring this out." So I said, "All right, I'll take it;" and——

Q. Bring what?

A. He had an envelope, and it had "C. C. C. Camp" on there, and I opened the thing, and, much to my surprise, I saw this itemized stuff of keawe wood and all that stuff to "C. C. C. Camp", and the other one was a statement; so I told him, "Well, Captain Miles has gone in; I'll put it in his basket." So I put it in the basket.

(Testimony of Robert K. Mookini.)

Q. So that's the first time that you knew that there was any bill of it, one way or the other, so far as that luau bill was concerned?

A. Yes sir. [683]

Q. While you were there and shortly after Mr. Lee Chong left did anything happen?

A. A telephone call came in; I answered the telephone.

Q. Who was on the other end of the telephone?

A. I got on the line, saying, "C. C. C. Camp, Mookini talking;" then from the other side, "This is Captain Miles." I said, "Yes, what is it?" He says, "Is Colman there?" I said, "Well, Colman just gone to breakfast; I'll call him." About that time I saw Colman coming in; I says, "The Captain wants you on the line." So, as I was standing by there, Colman answered, he says, "Colman talking;" Colman now took the telephone and looked at me kind of surprised and says, "Did Lee Chong come here?" I says, "Lee Chong just gone." He said, "Lee Chong gone?" Then finally he looked at me again and says, "Did Lee Chong bring anything?" I says, "Yes, he brought an envelope." He talked through the telephone and says, "Yes, there's an envelope out there." He says, "What—don't let anybody see it?" and he couldn't get on to it.

Q. This is the conversation that Cunningham was talking into the telephone?

(Testimony of Robert K. Mookini.)

A. Colman was saying this; he says, "Don't let anybody see? I can't hear you; you mean, not let Mookini or anybody see?" "Yes, all right; where do you want to meet me?" He was trying to get over the telephone; I don't know whether the connection was bad. He says, "All right, I'll be right down to the Capitol to meet you." So he told me I was quartermaster there, can't I have transportation there? I says, "If it's the Captain's orders for you to go to town, [684] surely you can have transportation." I called a service man and said, "Have transportation arranged for Mr. Colman immediately"; and Mr. Colman left.

Q. You had seen the bill after Lee Chong brought it out there?

A. Yes, but they didn't know I had seen it.

Q. Do you recall whether or not the bill that you say, segregating, as I understood you to say, this keawe wood and other items, had or did not have the word "Canteen" on it?

A. No sir; I saw it here.

Q. You saw the one, referring to Defendant's Exhibit 1, without the word "Canteen"?

A. No, the word "Canteen" was not on it.

Q. Was there anything else at all that came to your attention about that September bill; did you have anything more to do than just about finding out about it in October, as you've said?

A. In October, I didn't know about this change until I saw it out there, and then, around October 12th, Lee Chong and McGregor came out.

(Testimony of Robert K. Mookini.)

Q. That was the next time that anything having to do with this matter was called to your attention?

A. Yes sir.

Q. What happened on that occasion of October 12th

A. Well, about October 12th Mr. Yates reported to the Camp as Camp Director; I was busy with him in effecting the transfer of property as ordered by Mr. J. W. Lloyd, to get our certificates and everything ready; so about 2 o'clock or 2:30 there was an insurrection out there; Miles came out rather after he was out there;——

Q. What do you mean by an "insurrection"? [685]

A. Well, they had a riot out there; it was worse than a massacre; there was men surging into the office trying to wreck the whole office, because Miles was discharged; they were protesting and they were yelling like wild Indians out there; a bunch of them surrounded me and surrounded Yates, they dragged Yates out and dragged me out; I kept telling them, "Hold your shirts on"; in fact, I reported to Mr. Lloyd there was "something rotten in Denmark" out there.

Q. What happened?

A. Lee Chong in the meantime had come in with McGregor; I was at the typewriter fixing up some certificates for Mr. Yates; then an argument ensued over some bill or amount that was not paid; Mr.

(Testimony of Robert K. Mookini.)

Yates called me over and he says, "What are we going to do with this, Mookini?" I says, "I don't know; what is it all about?" So then, for the first time, I was informed that the Canteen was charged with this $72.50. So, after several talks between Yates and Miles and Lee Chong and McGregor—McGregor doing most of the talking for Mr. Lee Chong—McGregor then said, "We need the money to pay some of our bills; I'll take it on part payment of the account"; so I returned back to my typewriter to complete my work, when he came over and says, "Will you type a receipt out for me so that I can show we're taking it in as part payment?" I says, "O. K.", and I typed the thing out for him.

Q. I show you now United States Exhibit "K" and Defendants' Exhibit 2, and ask you if that is the original and carbon copy of what you typed at that time?

A. Yes sir. [686]

Q. Calling your attention to the signatures of R. M. Yates and yourself; do you see Mr. Yates' signature down here; is that his signature?

A. That's his signature; he signed it right in front of me.

Q. And you signed it?

A. Yes, I signed it, "Q. M., C. C. C. Camp".

Q. Mr. Mookini, did you ever have any drinks over at Lee Chong's place of business?

A. Yes, I did.

(Testimony of Robert K. Mookini.)

Q. Under what circumstances did you have drinks at Lee Chong's place of business?

A. Several times; one time, I think, with Mr. Colman; next time with Mr. Gibson, around lunch hour; we were going to go over and get a gin fizz from some of the bars, it cost 35 cents, which was too much money, so we bought our bottle and went down there and imposed on Lee Chong to give us some ginger ale or lime rickey; he gave it to us; we mixed the drinks, and went out and had lunch.

Q. Did Lee Chong ever give you any liquor himself?

A. No, he didn't.

Q. Anytime you had a drink of anything excepting—well, did you ever have any beer down there?

A. Sometimes we went and took it without asking—just raided the ice-box.

Q. There was beer there?

A. Beer, yes.

Q. Aside from beer, if you ever had drinks there, I understand you brought your own, is that right?

A. Yes.

Q. Did you ever see any whiskey or gin down there unless you [687] or someone else had brought it there?

A. No; Lee Chong never had any of that around the place.

Mr. ULRICH: If Your Honor please, I think I am through; if the Court is going to take a recess

(Testimony of Robert K. Mookini.)

at eleven I'd like to check over my notes before finally dropping the witness.

The COURT: The Court will take a recess.

(Recess—10:55 to 11:10 a. m.)

Mr. ULRICH: Mr. Mookini, just one or two more questions.

Q. It's been testified by Mr. Cunningham that upon Mothers' Day you appropriated all the cigars and cigarettes, I understand, and took them over to your tent or had them sent there to you?

A. There was no cigars and cigarettes on Mothers' Day.

Q. I mean for the luau?

A. We had some cigars and cigarettes out there.

Q. Did you have them taken over to your tent?

A. No; they were divided between Miles' tent and mine.

Q. That is, you had a sort of headquarters?

A. Yes; we put up a "fly", in other words, a canvas top, with board flooring, and there was a runway between the officers' line, as we call it; and there was musicians there that Miles brought out there, women musicians, two glee clubs out there; we had Senator Lane out there; and they were smoking, and cigars were distributed around.

Q. And that's where the cigars and cigarettes were?

A. Yes sir.

Q. After it was over, did you have them "salted away" for your own personal use, any cigars or cigarettes out of that?

A. Well, there were a few left that I kept. [688]

Q. Any considerable number?

A. No, maybe about a dozen or half a dozen, because everybody was smoking cigarettes and nobody paid any attention to it, cigars didn't mean anything that day, they were just smoking cigarettes.

Q. Were there flowers out there on Mothers' Day?

A. Leis for the guests.

Q. Any other flowers?

A. Mothers' Day we had flowers, but on the luau day we had leis.

Q. I am getting my dates confused. On Mothers' Day there were flowers, were there?

A. Yes. We had 29 mess tables in the mess hall, and on each table was a big bouquet of red and white carnations.

Q. And on the luau day they had the leis?

A. Leis, yes, the guests were given leis.

Q. Now Mr. Mookini, when goods were delivered to Camp and billed to the Camp, whether they were to go to the Mess or to the Canteen, or any other department out there, how would they be billed?

A. The way it was handled out there it was not billed any particular fund, it was just "C. C. C. Camp".

Q. And who was the person who decided out of what particular fund the payment would be made?

A. Captain Miles, custodian of the fund.

(Testimony of Robert K. Mookini.)

Q. That is, if goods came out there, part of them property chargeable against the Mess, and part of them properly chargeable against some other Fund, he would be the one that would allocate as against one fund or the other?

A. Yes. [689]

Q. Did you have anything at all to do with that?

A. No.

Q. For example, do you recall this Junior Police picnic that you had out there during the Summer time?

A. Yes, I do.

Q. Do you recall that there was a considerable order of goods for people outside the Camp entirely that was paid for out of the Mess Fund at that time?

A. Yes there were.

Q. And at other times, for example, do you recall that non-edibles were paid for out of the Mess Fund, for subsequent adjustment?

A. Yes.

Q. I call your attention to this United States Exhibit "A", to a check signed by Mr. Miles, dated July 7th, 1934, to the Honolulu Paper Company, Ltd., $19.08; did you have occasion to know whether the Honolulu Paper Company sell any eatables at all?

A. No, they don't.

Q. Do you know what that was for?

(Testimony of Robert K. Mookini.)

A. Paper plates and cups for the Junior Police picnic.

Q. And that was later readjusted from another account, was it?

A. Yes.

Q. Does that appear here?

A. No, this amount here was paid out of the money that the Police Department paid the Camp for staging the picnic, the luncheon out there, and this year the amount was paid out of the money that was deposited to the C. C. C. Camp Director's Fund.

Q. So that, in the matter of non-edibles or edibles, as [690] the case might be, the matter of paying it one way or the other was ultimately taken care of by Mr. Miles?

A. Yes sir.

Q. And the individual person, whether it's the Honolulu Paper Company, or whoever it might be, who was selling the goods would merely bill the Camp, and he would take care of the way in which they were paid?

A. Yes sir.

Q. Ever heard any suggestion that the Honolulu Paper Company was attempting to defraud the Government when they sent a bill for $19.08 to the C. C. C. Camp for paper plates?.

A. No.

Q. Or that anyone else, excepting Mr. Lee Chon, was defrauding the Government for just that sort of thing?

(Testimony of Robert K. Mookini.)

A. No sir.

Q. There has been some testimony relative to a Mr. Glowenlee; Mr. Cunningham testified to some conversation or something that took place out at the Camp relative to a meat chopper; do you know anything about that?

A. Yes sir.

Q. Will you tell the jury what happened in that regard, Mr. Mookini?

A. Mr. Glowenlee was out at the Camp soliciting business——

Q. Who is he, by the way?

A. He's a salesman for the Hurd-Pohlmann Company. Well, prior to the time that Glowenlee came out there to inform me of what Cunningham had done, I may say that during this month of May there was some steel knives bought, some were bought from Davies & Company, some were bought from American Factors, and some were bought from Hurd-Pohlmann Company, [691] depending upon the price, because the prices at different places here, one was lower than the other for certain knives; so the bill, if I remember correctly, at the Hurd-Pohlmann Company ran about $67.50, for which a purchase order was taken care of by the office over here under the heading of Camp Equipment; and those knives were taken out to Camp; and about a week later, or a month, I'm not quite sure, Mr. Glowenlee came over and told me,

(Testimony of Robert K. Mookini.)

he says, "Bob, is it customary for the cook to get any 'cumshaw'?" I says, "What do you mean?" He says, "Do you remember the knives that were bought at Hurd-Pohlmann?" I says, "Yes, about $67.50 or around that." He says, "Yes; while they were wrapping the order and it was going out the door, Cunningham was upstairs demanding his 'cut'."

Q. Demanding what?

A. Demanding his "cut" of the order.

Q. His cut?

A. Yes, his "cut"—the "cumshaw". I says, "Well, that's surprising; what did he get?" He says, "$6.75, in cash." I says, "Well, why are you bringing it up?" He says, "He's trying to pull the same stunt on the meat chopper." Cunningham, through Mr. Miles, had ordered an automatic cutter; —his contention was that the cook was so busy and there wasn't enough help in the kitchen to properly make 970 sandwiches a night, it would take the boys up to midnight, the kitchen police; so by having the slicer would split the work up or reduce it about two or three hours; so this meat chopper was delivered out there, and it cost us $185.00. Glowenlee said, "Cunningham is insisting on [692] this cut of 10% on this cutter." I told Glowenlee to wait, so I called Mr. Cunningham over to the office; I says, "Jack, I want you to tell me the truth, did you get any commission from the Hurd-Pohlmann Company on knives that you bought there?"

(Testimony of Robert K. Mookini.)

He said, "Yes, but that was for cigars; they can't find out about it; it was cash; I can tell them it was for cigars." I said, "Well, Jack, I'll have to inform the Captain, Mr. Miles." So I took it up with Mr. Miles and I told Miles, I said "Captain Miles, maybe you should know this", and I told him. He in turn replied, "I can't do anything to Jack; if I let Jack go now he'll be back in the gutter where he was before I picked him up, and Jack is a personal friend of mine." I says, "Look here, we're going to get in hot water if a man goes out and demands cuts like that." So Glowenlee came back, and presently he says, "He's still asking for the cut." I says, "I tell you what you do; give him the cut, but you let us know when; mark it, and we'll be in there to find out." Cunningham didn't appear in the Hurd-Pohlmman office for the $18.50; he stayed away.

Q. And nothing more happened about it, so far as you know?

A. No.

Q. Just one other thing. There's a witness who testified about a conversation which you're supposed to have had over the telephone when, I think this man—it was Gibson or Colman—one of these witnesses testified that he had a talk with you in which it was said that somebody was carrying on an investigation, and you said something about beating this person up, as I recall it; and then

(Testimony of Robert K. Mookini.)

there was a telephone talk in which you're supposed to have asked [693] Mr. Lee Chong to say nothing until you saw him, or something of that kind; do you recall that testimony?

A. Yes; I heard Gibson and Colman say that.

Q. What happened; did you ever have a talk about that?

A. I called Mr. Miles' attention to a remark that was made by Mr. Colman that there was a shortage in the camp, so I told Mr. Miles, "Remarks like that is not so good."

Q. That's Mr. Miles?

A. Captain Miles; I was talking to him prior to the time I was talking to Colman and Gibson. Miles told me, "No, nothing of the kind; there must be a misunderstanding." I says, "Well, Captain, if there's anything wrong out here, the best thing for you to do is to get the Government auditor to come out here and go through the whole works."

Q. Well, let's talk about the time you had a conversation with Gibson?

A. Then I told Gibson about the remark I heard that Colman had made; so I went down to the office, right at Colman's desk, and says I came there to ask him whether he made any such remark; I says, "I would sooner talk to you than going outside and talking to everybody else but the right person; I would sooner confront you with it." If he said "Yes", we were going to have it settled before Mr. Miles; if he said "No", let the matter

(Testimony of Robert K. Mookini.)

drop; I was big enough to take it up with the Director.

Q. Was there any talk about beating Colman up?

A. No such talk.

Q. Did you talk to Lee Chong?

A. Not to say anthing about it.

Q. You didn't call up Lee Chong about it? [694]

A. No, I never called up Lee Chong or said anything about it.

Q. As I understand your testimony, Mr. Mookini, you didn't know anything about any changes made on any of these bills until it was over?

A. Not until September 13th.

Q. Until after they had been made and the bill already sent in and until along about September 13th?

A. Yes.

Q. You had nothing to do with making those changes?

A. No sir.

Mr. ULRICH: That's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. You say you're a graduate from McKinley High School, and then you went to work for the Consolidated Amusement?

A. Yes sir.

Q. And you worked for them for 17 years?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Did you quit, or did they relieve you?

A. Reorganized, and I left there.

Q. You quit, yourself?

A. Yes sir.

Q. You weren't asked to resign?

A. No. The manager called me in and told me there was a reorganization, some of the directors were at odds with me; whereupon they handed me close to $750.00 as a bonus.

Q. During the time you were working for the Consolidated were you working for anyone else?

A. Not that I remember.

Q. Did you ever do any work under Mr. Arthur Powlison?

A. After I left the Consolidated; temporarily.

Q. Well, while you were working for the Consolidated weren't [695] you working under Powlison?

A. I worked under nearly everybody; I was officiating in athletics; if you call that working, it must be work; but I donated most of my services.

Q. You don't work for the Recreation Commission any more?

A. No; I went to the Camp after that time, and then after I left the Camp I went with the Legislature.

Q. You say you went out to the Camp or you started working for the Civilian Conservation Corps about January 29th?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. And the Camp itself was actually established around March 6th or 7th?

A. About the 6th.

Q. And when you first went out there you were the Recreation Officer?

A. Yes sir.

Q. And that was your sole duty, was recreation?

A. Yes sir.

Q. And didn't Major Mahaffy have to get you out of bed to give the calisthenics in the morning?

A. Nobody had to get me out of bed to do this work; if he said I did most of the work out there, that's the truth.

Q. If he said that?

A. Yes, if I did most of the work.

Q. But he didn't say that. Isn't it true that he told you that if you couldn't get out of bed he would go out and give them calisthenics himself?

A. No sir.

Mr. ULRICH: What is this; examining the credibility of this witness, or rising hours in the morning? [696]

Mr. MOORE: According to his testimony——

Mr. ULRICH: It's absurd; I submit the cross-examination is irrelevant, improper, and not along any line of the direct examination, and not directed to any proper purpose; it doesn't attack his credibility whether he got up early in the morning.

(Testimony of Robert K. Mookini.)

Mr. MOORE: May it please the Court, after listening to the testimony of this witness I marvel at the necessity of anybody else in the Camp, from what he said he has done; and I think I have a perfect right to cross-examine along the line to show that his duties weren't so "hot".

The COURT: Proceed.

Mr. MOORE: Didn't Major Mahaffy tell you that if you didn't get up and give these calisthenics that he would get up and give them himself?

A. No, he didn't.

Q. Never complained about your hours?

A. No, never; the only time we ever had any conversation was in the presence of Mr. Miles.

Q. You never talked to Major Mahaffy unless Miles was present?

A. This particular instance you're referring to happened in front of Mr. Miles. Mr. Mahaffy told me that he wanted to have calisthenics right directly after the men were inoculated. You can't take up calisthenics when a man is inoculated; he can't move his arm; in fact, it might make a reaction.

Q. And you say you were also the Camp policeman?

A. Yes, I was.

Q. That is, you went to see that the company streets and ash cans and everything there was clean? [697]

A. And everything else, including the lavatory.

(Testimony of Robert K. Mookini.)

Q. And this fellow Gibson didn't have anything to do with that at all?

A. Gibson, I helped him with all his work out there.

Q. You helped Gibson; besides doing all your own work, you helped Gibson do his?

A. Yes; I was ordered by Major Mahaffy and Captain Miles.

Q. Was it Gibson's duty to police the Camp, or was it yours?

A. At that time they didn't have any particular person; they delegated me to it.

Q. Then, you say, later on in the latter part of March you became—you took over the duties of the Mess situation?

A. Yes, I was asked to take it over and handle it.

Q. You say that Major Mahaffy came to you and says, "Now here, these mess funds are running in the hole, and do you know how we can come out of it?"

A. Miles talked to me.

Q. I thought you said something about Mahaffy saying that if something didn't change that he was going to have to put out his whole month's pay check?

A. Subsequently; he told me immediately after that.

Q. But Miles came to you first about this Mess?

(Testimony of Robert K. Mookini.)

A. Miles came to me first about assisting in the Mess.

Q. When did you start assisting in the Mess?

A. Around the 22nd or 23rd of March.

Q. And, through your magnificent efforts, they saved $344.00?

A. Through my assistance, in calling their attention to the storeroom that was overstocked.

Q. Did you ever hear of a staff-sergeant by the name of Marshall?

A. I was responsible for getting him up there to help; he [698] was there through Lieut. Pickles, who used to be up at Shafter.

Q. Who runs this—you, or the sergeant?

A. What do you mean?

Q. This Mess.

A. The sergeant was there to instruct Cunningham.

Q. Oh, he had to teach Cunningham how to cook, or something?

A. To run the Mess according to the way it was run by the Army; he wanted to teach him how to put the meals out.

Q. Isn't it true that this staff-sergeant Marshall ran that Mess during the whole month of March?

A. I don't think so; he left there around the 15th; he was assigned to the Hawaiian Division Headquarters Company, something like that, as

(Testimony of Robert K. Mookini.)

signed as cook down there; really, the whole reason why Marshall left there was because Cunningham didn't want to have him around.

Q. Didn't Marshall run the Mess or act as mess officer during the month of March?

A. No sir; Gibson and I took it after that.

Q. Didn't this sergeant immediately oversee the buying and the running of that Mess?

A. No.

Q. Well, what did he do around there?

A. He was instructor.

Q. Instructor?

A. Yes sir.

Q. Instructing in what?

A. In the running of the Mess; handling of the Mess, teaching Cunningham.

Q. And he was doing that during the month of March?

A. He had it for about two weeks; two weeks is all he stayed there. [699]

Q. Now, isn't it true that you had—showing you United States Exhibit "L"; you had $344.87 in cash left over?

A. Yes sir.

Q. And then you had about $178.00 in supplies?

A. Well, they had some inventory left at the end of the month.

Q. Well, it was about $178.00 wasn't it?

A. I couldn't say whether that was the right amount, but maybe.

(Testimony of Robert K. Mookini.)

Q. In other words, between the cash and the goods on hand there was a little better than 500 dollars?

A. Well, Judging on the canned goods in there—the principal fluctuation, of course—remember that it's from this present price list that's in vogue at the Camp Quartermaster at Schofield——

Q. Isn't it true that, between your inventory and your cash, you had a little over 500 dollars at the end of the first month?

A. I presume so.

Q. And this staff-sergeant has been a fellow that's been doing this same sort of thing in the Army?

A. The first time I met Marshall was thru Lieut. Pickles; I went down and asked Pickles to help us out.

Q. Now, you say that you inspected all these fruits and vegetables, and all that sort of thing?

A. Not all; on our periodical inspection I come through and inspected all.

Q. How often were these periodical inspections?

A. Once a week.

Q. Saturday morning?

A. Sometimes Wednesday, sometimes Saturday; Saturday morning that's when the medical officer from Schofield comes up. [700]

Q. You say that when you became Mess Officer—just what were your duties as a Mess Officer?

(Testimony of Robert K. Mookini.)

A. Supervise the Mess.

Q. And what do you mean by that, "supervise the Mess"?

A. You get out there and see that the boys get what they want to eat; see that the meals are properly placed out; see that they get plenty to eat; go through the kitchen and see that it's run according to sanitary rules.

Q. But you didn't have anything to do with ths buying of the food?

A. Because Miles left that to Cunningham to do all the buying.

Q. Miles never gave you instructions not to do any buying?

A. No, he never said anything to me, but I know that Cunningham did all that buying because Captain Miles told me "Cunningham understands the buying".

Q. And Miles gave you to understand that you were to leave that to Cunningham?

A. So he stated; I presume he meant to leave it to Cunningham.

Q. And you never did any buying at all until after Miles made is exit out there?

A. Yes sir.

Q. That's correct?

A. Yes sir.

Q. When you first became Mess Officer they were buying a few vegetables at Chun Hoon's con-

(Testimony of Robert K. Mookini.)

cession over there in the Schofield Commissary, or Quartermaster's or whatever it is; is that right?

A. They were buying from Chun Hoon.

Q. Didn't you ever go over there and place orders yourself?

A. No.

Q. Never did? [701]

A. No; that's Cunningham handled that; I know that, too.

Q. You're extra sure of that?

A. Yes, I am sure.

Q. And you never, either by telephone or otherwise, came down town to Lee Chong's to place an order?

A. No; that's the only time I ordered anything was when Miles got discharged.

Q. After his discharge?

A. After Miles was discharged.

Q. This mess officer proposition is what is commonly known in Army circles, or as we talk in the Army, as part of the "Q. M.", isn't it?

A. The Mess a part of the Quartermaster's?

Q. Yes.

A. It may be part of the Quartermaster's in the Army; it wasn't part of the Quartermaster's in the Civilian Conservation Camp, which was a similar organization.

Q. I mean that, in Army circles Mess is "Q. M."—purchases of food?

A. No.

(Testimony of Robert K. Mookini.)

Q. I understand that in the company the running of the Mess is "Q. M."?

A. Yes.

Q. But the acquiring of the foodstuffs is "Q. M." isn't it?

A. They buy from the Quartermaster; that's only canned stuffs and meats.

Q. You were a Reserve Officer once, weren't you?

A. Yes sir.

Q. And you were in the Quartermaster's weren't you?

A. Sure. [702]

Q. Are you still a reserve officer?

A. No sir.

Q. How did you happen to separate from the service?

A. I was discharged.

Q. You used to be a Second Lieutenant, didn't you?

A. Yes sir.

Q. What were you discharged for?

A. That I don't know; you have to ask Mr. McGhee; I appealed to Mr. McGhee.

Q. You don't know what you were discharged for?

A. He represented me in this hearing.

Q. You don't know what you were discharged for?

(Testimony of Robert K. Mookini.)

A. No; to present time since I was discharged I don't know why.

Q. You haven't the slightest idea?

A. No.

Q. Never asked anybody?

A. I took it up when they asked me about it, when they called me to appear before a Board.

Q. The Board that was hearing these charges?

A. Yes.

Q. You never knew what they were?

A. No. I asked them, "What are the charges?" They said, "We can't leave you know". After a while I retained counsel and Mr. McGhee appeared and asked them what it was.

Q. Didn't you ever find out what it was?

A. Yes, after I was discharged, when I went up there with Mr. McGhee.

Q. What was it then?

A. That I don't know, what the technical charge was, but I know I was discharged.

Q. You were discharged for misconduct, weren't you?

A. No. [703]

Q. And you haven't the slightest idea what you were discharged for?

A. No; because they made some charge out there, and I got hold of Mr. McGhee to represent me there.

Q. And you want this jury to believe that they made charges out there against you and you got

(Testimony of Robert K. Mookini.)

Mr. McGhee to go up there and appear for you and you did not know then nor do you know to this day what the charges were against you?

A. I found out when I went with Mr. McGhee.

Q. What were they?

A. You want me to tell you?

Q. Sure.

A. Because I helped a man out of trouble, for his wife and kids; that's what it is; that's the whole thing in a nutshell.

Q. "Covering up" for somebody else?

A. Yes; his wife and his kids needed his support.

Q. In other words, you want this jury to believe that you "took the rap"?

A. Yes, I did.

Q. And you say that you have a wife and a child?

A. Yes sir.

Q. You say the first time you met Lee Chong was out here at the Camp, I think you said it was around in the early part of April, is that right?

A. Well, about after I was introduced to him at Schofield.

Q. And you told him, the first thing you said to him was "God help you if you give 'cumshaw' to anybody"?

A. Correct.

Q. And what did your athletic duties out there consist of? [704]

(Testimony of Robert K. Mookini.)

A. Calisthenics, games, and see that the proper reservations was made at the shows; picnics;——

Q. In other words, get show tickets for them?

A. No; I made reservations, called up at the theater and told them how many men coming down.

Q. What else?

A. Picnics.

Q. Where were these picnics?

A. Swimming at Haleiwa.

Q. That was on week-ends?

A. Week-ends..

Q. These boys, as I understand, went out there to do some work, didn't they?

A. Yes.

Q. And during the day they were supposed to do a certain amount of work?

A. Yes.

Q. And some of it was making trails, and the other was reforesting out there, wasn't it?

A. That's true.

Q. And, on an average, how many hours a day would they work?

A. Not judging transportation, about five or six hours.

Q. Exclusive of transportation?

A. Yes.

Q. And they went on a ways up in the hills a lot of times to work?

A. I told you they got their calisthenics from 5:30 until a quarter to six.

(Testimony of Robert K. Mookini.)

Q. In other words, 15 minutes of calisthenics in the morning?

A. Yes.

Mr. ULRICH: If Your Honor please, I don't want to appear to be unreasonable, but I do believe that we ought to confine this cross-examination with things that have to do with the trial of this case. [705]

The COURT: Yes. The Court does not see how it's material about their calisthenics. Mr. Moore, when you get to a new line on your cross-examination, please indicate it so that we can take our adjournment.

Mr. MOORE: I think, Your Honor, that this place would be as good as any.

The COURT: Gentlemen of the jury, remember the admonition heretofore given; and be in your places promptly at nine o'clock tomorrow morning. You'll be excused at this time. Now, Mr. Ulrich and Mr. McGhee, are you ready to proceed on the matter of instructions this afternoon?

Mr. ULRICH: Mr. McGhee has been handling the instructions, and he tells me he's not ready.

(Discussion as to the time for settling instructions)

(Adjourned—11:46 a. m.) [706]

(Testimony of Robert K. Mookini.)

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Thursday, May 23rd, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States, and stipulate that the jury is present.

Mr. ULRICH: Ready for the defendants, and so stipulate.

The COURT: Let the stipulation be noted.

ROBERT K. MOOKINI

resumes the witness stand, under continued cross-examination by Willson C. Moore, Esq.

Q. Mr. Mookini, showing you United States Exhibit "C", that has our signature on it, has it not; that is the [707] voucher of May 12th?

A. Yes sir.

Q. And when did you sign that?

A. At the Camp.

Q. On the day of the delivery of the goods, or not?

A. I don't remember what day; I know, before the 20th, the next audit of the accounts out there.

Q. But you were not present when this voucher came out?

A. No sir.

(Testimony of Robert K. Mookini.)

Q. Now, with reference to the September 1st luau accounts, you say that about 10 days before that you and Cunningham were down town and you talked to Lee Chong and McGregor about what was necessary for a luau?

A. The conversation with McGregor?

Q. Yes.

A. I said, about two weeks.

Q. About two weeks?

A. About that time—a week or ten days.

Q. And all that was brought up at that time was just what was necessary?

A. Quantities.

Q. And no actual ordering at all?

A. No sir.

Q. Out at the Camp did you talk with anybody about this luau prior to coming down town on this meeting?

A. With Captain Miles.

Q. You talked to Captain Miles. Were there any estimates made out there at all that time as to what the cost would be?

A. Captain Miles was figuring on giving a luau at the close of the six months period, which was supposed to have been September 6th, but he changed it to September 1st, and [708] he requested to make an estimate of what was needed, Cunningham to fix up the list of requirements and an estimate as to how much the cost was to be had.

(Testimony of Robert K. Mookini.)

Q. And do you recall what the amount of that estimate was?

A. The estimate in the office ran about 800 and some odd dollars.

Q. And was there a cutting down of that estimate, that you know of?

A. A second estimate was taken after Miles had suggested some of the stuff was not needed on it, and he told me to get the adding machine and run it off again, and it ran something like 600 dollars.

Q. You had nothing to do with the cutting out of any of these articles on it?

A. No sir.

Q. After this time, which you say is about two weeks before the luau, that you were down town discussing with McGregor and Cunningham at Lee Chong's the items of this luau, were you ever down there after that and before the luau?

A. I came down to pick the stuff up.

Q. You came down to pick the stuff up?

A. Yes sir.

Q. Did you have anything to do with its ordering or buying, or anything of that kind?

A. No.

Q. Not a thing?

A. No sir.

Q. And the morning that you came down to get the stuff, I understand you came in on the C. C. C. truck?

A. On the station wagon.

(Testimony of Robert K. Mookini.)

Q. Well, it's a conveyance belonging to the Civilian Conservation Corps?

A. Yes sir. [709]

Q. And from there you went to the Police Station to look after a penal summons that you got?

A. Yes sir.

Q. Was there any Hawaiian pudding with that luau?

A. If you ask Mrs. Miles about it maybe she'll tell you.

Q. And did you go along with her when she ordered it?

A. No sir.

Q. You weren't in the car?

A. I drove her down.

Q. You picked her up at the Capitol?

A. Yes; she had the handling from Miles, not me.

Q. She didn't ask you where you could get this pudding?

A. No; she told me that Captain Miles had ordered her to go and order the Hawaiian pudding, and the opii, and all that stuff.

Q. And during the whole time that you were Mess Officer—I mean, before Miles' exit—you never ordered any booze?

A. No.

Q. And you're just as sure of that as anything else you've testified to in this case?

A. Yes sir

(Testimony of Robert K. Mookini.)

Q. Do you remember being called before the Federal Grand Jury?

A. I remember that correctly.

Q. And you signed a waiver before you went before that grand jury?

A. With all good intentions I came there, yes.

Q. And you were sworn before that grand jury to tell the truth?

A. Yes.

Q. And I conducted the examination on that grand jury? [710]

A. Very unfair, if I may say.

Q. Very unfair?

A. Yes.

Mr. ULRICH: If there's going to be an examination on the evidence given before the Grand Jury, I ask first to be permitted to inspect the evidence, so that I may properly object or otherwise, as the case may be. I don't think there can properly be an examination on evidence before the Grand Jury which has always been in the custody of the Government.

The COURT: At this time the Court understands that counsel is simply laying a foundation?

Mr. MOORE: That's all, Your Honor.

Q. Do you remember being asked this question:——

Mr. ULRICH: I object, if Your Honor please, to any part of the evidence before the Grand Jury being shown to the witness without an opportunity

(Testimony of Robert K. Mookini.)

given to counsel to inspect the questions and answers.

Mr. MOORE: May it please the Court, I am laying a foundation; this is data that is part of the records of the United States Attorney's office, and in the event that this defendant denies making the statements that we contend that he did make, the United States Attorney's office will produce the stenographer that took the record and prove the record.

Mr. ULRICH: (Argument).

The COURT: The Court sees no other way of laying a foundation for this impeachment except by asking this defendant whether he did not testify so and so; he cannot ask the whole thing at once.

Mr. ULRICH: Will the Court grant me the inspection of the evidence before the Grand Jury? [711]

Mr. MOORE: As I understand the rule of law, may it please the Court, with reference to documents or evidence in the hands of either counsel or memoranda in the hands of either counsel, that that memoranda, unless and until it is sought to be introduced in evidence, is not available to the other side; and, it is a further rule, as I understand, of the ethics of this profession, that no person should endeavor to prove something or to insinuate something that he cannot prove; and I, as a member of this bar and as a member of the United States Attorney's office, am following those

(Testimony of Robert K. Mookini.)

two rules, first, that I did not insinuate anything that I cannot prove, nor am I called upon to produce the information that I have to the other side until such time as it is necessary to offer that for the purpose of identification or in evidence.

Mr. ULRICH: If Your Honor please, this is an important matter,——

Mr. MOORE: Very important.

Mr. ULRICH: (continuing): and I want the Court to clearly understand at this time—I'm not attacking the credibility or the integrity of the United States Attorney at all; I am suggesting to this Court, however, that it is a fundamental rule of law that you cannot examine a witness upon a part, and a part only, of a document or line of evidence that may theretofore have been given by him; that if you're going to read anything to a witness in the presence of a jury,—or, for that matter, in the presence of a Court alone—we're entitled under the law that the entire thing shall be offered as a matter of examination of the witness, so that we'll be able to fairly show the jury or the Court [712] what the meaning of that thing is on re-direct examination. Why, he can pick out questions and answers there—I haven't the slightest objection to anything this man may have said before the Grand Jury or elsewhere being shown to this or any other jury, but I do insist that the whole of it be shown to the jury, and that we be permitted to inspect the

(Testimony of Robert K. Mookini.)

whole of it for the purpose of showing what is the true meaning, and not that a single question or answer be asked this witness without my right to know what the next question is or the next answer which might explain that or make it have a different meaning. I want this jury to have what this man said to the Grand Jury, but I want them to know everything he said. I submit I am entitled as a matter of right to the inspection of any document or deposition or line of testimony that has been given which is used as a basis for cross-examination of the witness.

Mr. MOORE: (Argument).

Mr. ULRICH: The issues before the Grand Jury were exactly the same as before the Court here, and I suggest there is something funny,——

Mr. MOORE: There's not a thing funny——

Mr. ULRICH: (continuing): trying to keep things from this jury, we've had that altogether too much here.

Mr. MOORE: I object to that, may it please the Court; his alleging "something funny" is misconduct before this Court.

The COURT: The objection is well taken. Mr. Ulrich, you have had the right to protect your clients by proper objection all through, and if you failed to do so you have been remiss in your duties, and it's not proper for you to assert it's been due to misconduct on the part of the United States Attorney. [713]

(Testimony of Robert K. Mookini.)

Mr: ULRICH: I did not intend any such interpretation.

The COURT: Your language is clearly capable of such interpretation, in the opinion of the Court.

Mr. ULRICH: I submit the objection, Your Honor.

The COURT: Please state the objection in full, so that it will be intelligible to the Court.

Mr. ULRICH: The objection is to the examination of this witness of a portion of a transcript of evidence of his taken before the Grand Jury, without counsel being given the privilege of examining the document for the purpose of re-direct examination. The objection is connected with the motion for leave to inspect the document.

The COURT: As the Court understands this document which the United States Attorney is using, it's simply his notes in preparing for this case and doesn't assume to be a transcript of the evidence given by this defendant?

Mr. MOORE: Your Honor is mistaken there. This document that I am using is a transcript of the notes of a stenographer of our office; those notes of which this is a transcript were taken in the Grand Jury room at the time that this defendant was testifying before that body, and as the statute under which it is authorized states, it is permitted for the purpose of assisting the United States Attorney's office.

(Testimony of Robert K. Mookini.)

The COURT: It is the opinion and ruling of the Court that counsel is not entitled to examine this transcript unless and until it is offered in evidence.

Mr. ULRICH: We will note an exception to the ruling of the Court.

The COURT: The exception is allowed. [714]

Mr. ULRICH: I take it that the Court also overrules the objection to the question?

The COURT: That is correct.

Mr. MOORE: I hadn't completed my question yet, Your Honor.

Q. You will recall that you were questioned before the Grand Jury with reference to these vouchers of May 12th for Mothers' Day?

A. Yes sir.

Q. Then later on you were questioned about the vouchers of September 1st?

A. Yes sir.

Q. Now, beginning with the first question that was asked you with reference to this September 1st, was not this question asked to you:

> "Now, do you know anything about these? Here's a voucher I show you under date of September 1, 1934. These initials down here in the line where it says 'Received the above articles', those were Cunningham's initials?"

Do you remember that; were you asked that question?

A. You mean the September voucher?

(Testimony of Robert K. Mookini.)

Mr. ULRICH: I object to that question and all questions, if Your Honor please, reading to this witness a part and a part only of the record before the Grand Jury.

The COURT: Let the record show that the same ruling and exception apply to all objections on this line.

Mr. ULRICH: Exception will be allowed to all?

The COURT: Exception allowed.

Mr. MOORE: The question that I just read to you, was that asked you before the Grand Jury, or not? [715]

A. I remember questions being asked, but you showed me the May 12th voucher.

Q. I am talking about the September 1st voucher.

A. Yes.

Q. Was this question asked you, or was it not?

A. I think that that question was asked; I don't remember.

The COURT: And your reply was "Yes" that these initials here (indicating on document) were Cunningham's, was it not?

A. Yes, it is.

Mr. MOORE: Referring to United States Exhibit "G".

Q. And, just to give you the context, there was another voucher shown to you, with 25 pounds of yams; the question is:

"And here's another one dated the same thing?"

(Testimony of Robert K. Mookini.)

Your answer was "Yes". Now, this next question will clear up what was intended. Wasn't this question asked you:

"And you will notice that upon this—that is, the one which is receipted for by Cunningham and the one that was presented for actual payment"—

showing document to the witness)—this is the one that was presented for actual payment, is it not?

The COURT: How is it marked?

Mr. MOORE: Exhibit "H".

A. I think that was presented for actual payment; $526.60 was the one that I saw.

Q. (continuing quotation):

"the one that was presented for actual payment—do not conform. Calling your attention the particular things: You see there is 50 pounds of [716] California yams over here and over here it is 25."

(Showing document to witness).

"And down here there are honey dew melons, pumpkin, dried mushrooms, and so forth. Those don't appear on here. Do you know anything about these bills?"

Q. Do you remember being shown those two exhibits that you have in your hand?

A. I think I do.

Q. And asked this question?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Those two exhibits are United States Exhibits "G" and "H". And your answer was:

"There is another bill on these. It runs to about $72.50, I think."

"Q. This is the bill here?"

"A. Yes, $72.50, that is correct."

Q. (showing document to witness): And you were shown this bill, is that correct?

A. Yes.

Q. Now, before we proceed any further. Did you instruct anybody down town at any time to change these bills and put in these two bills, that is, $72.50?

A. No; when I made that statement "$72.50" you wouldn't let me explain it; I was going to tell you I knew this when the thing had happened; October 5th, but you cut me short.

Q. The next question; was this asked you:

"In other words, in this bill here that is presented, which is $526.60, (Exhibit "G") there's concealed in amongst those items this for kiawe wood, chicken wire, Hawaiian pudding, chairs, etc?"

Q. You were asked that question?

A. Yes sir. [717]

Q. And you answered "Yes"?

A. Sure.

Mr. ULRICH: May I just for the purpose of the record interpose another objection at this time

(Testimony of Robert K. Mookini.)

indicating the unfairness of the line of cross-examination?

The COURT: Proceed with your objection.

Mr. ULRICH: Of course at that time the witness knew all of these things; they had been called to his attention; he was testifying along in the latter part of the month of March; I submit it's utterly unfair and improper cross-examination to indicate what he told the Grand Jury what he knew about those bills as evidence of knowledge before the bills came in, and something of that kind; and that's the line of cross-examination; and, further, without permitting us to show in what way they came to his attention. I submit the objection.

Mr. MOORE: May it please the Court, these first few questions that I am calling to this man's attention is to familiarize himself with the situation, and tie it up with what followed, so that there can be no mistake here; and that's what I am going —these particular questions right here are more or less in line with the evidence given, but it is more or less a continuity, and I think it is only fair to this witness to bring that continuity to his attention.

The COURT: The objection is overruled.

Mr. ULRICH: We note an exception.

The COURT: Exception may be allowed.

Mr. MOORE: Then the next question; was this asked to you:

"Did you know that that was put there to cover up?"

(Testimony of Robert K. Mookini.)

Q. Do you remember that question being asked you?

A. Yes, I do. [718]

Mr. ULRICH: Same objection; no showing when he knew.

Mr. MOORE: This is a very long answer, so that I'll take it by degrees. Now, isn't this what you answered:

"I instructed him to make two bills."

A. No, I didn't say "I instructed him."

Q. You didn't say that?

A. No sir.

Q. Now, continuing the same answer: Didn't you say:

"On May 16th Mr. Lloyd came down and took us over the coals for buying stuff which was like oysters and that stuff, so I, before this luau came up—the Camp was supposed to expire September 6th—about the middle of August Miles thought it would be a good idea to put on a luau for the boys out there because in the Mess Fund at that time there was money saved from the rations, so he told me to go down and price materials which would be used for the luau out there."

A. Correct.

Q. You made that statement?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Now, going on with the same answer; did you make this statement:

"So in the meantime we were having several meetings, Miles, Cunningham, and myself, around the office; * * * the fact that we couldn't buy anything out of subsistence funds that was not food.——"

Mr. ULRICH: Same objection; it now appearing he isn't even reading all of the same answer.

Mr. MOORE: I am continuing right on.

Mr. ULRICH: Is that continuing down? [719]

Mr. MOORE: Yes, right down; I have no knowledge whether it is actual or not.

A. Yes, it does.

Q. You made that part of the answer?

A. Yes.

Q. Continuing on in the same answer; did you make this statement:

"So he authorized me to go ahead."

Did you make that answer?

A. He authorized us to go ahead.

Q. Did you make that answer, saying, "So he authorized me to go ahead."

A. I didn't say "me".

Q. You didn't say "me"?

A. I said "authorized Cunningham and I to go ahead."

Q. Then you deny that you said "me"?

A. Yes sir.

(Testimony of Robert K. Mookini.)

Q. Going on the same answer; didn't you further continue and say:

"The first estimate submitted to Miles was about $800.00 which was ridiculous."

A. Yes, he said it was ridiculous.

Q. Did you make that statement before the Grand Jury?

A. Sure.

Q. Then, continuing:

"In getting other figures it was reduced to 600 and some odd dollars."

Q. Did you make that statement?

A. About that, yes.

Q. Will you admit making that statement?

A. Yes, about that.

Q. Now, continuing; did you make this answer: [720]

"He said to go ahead."

A. Yes, he did.

Q. In other words, you stated that before the Grand Jury?

A. Yes sir.

Q. Now, did you make this answer, continuing on with the same reply:

"So before September 1, I went down to make arrangements, bought all the stuff; I told them to send it out and to make two bills, one for subsistence, and the other for extras which could be paid out of the Canteen Fund."

(Testimony of Robert K. Mookini.)

A. No.

Q. You deny making that statement?

A. You bind me down to state—you want from me "yes" or "no" on a question like that: You asked me when I had gone down; I told you I went down to pick the stuff up; and as far as making two bills, I did not instruct them to make two bills.

Q. Just the latter part of this last question; did you make that statement before the Grand Jury, or not?

A. I don't remember this statement.

Q. Did you make it, or didn't you?

A. I made a statement there, but I did not say that I instructed them or I went down and made arrangements; I went down to make preparations that time for the quantities of an estimate.

Q. Mr. Mookini, this answer, the last portion of this answer that I just read to you, did you make that statement, as I read it, to the Grand Jury, or not?

A. I don't think I made a statement like that. [721]

Q. Well, would you deny making it?

A. Not in that form; I didn't make such a statement.

Q. Would you deny making that statement?

A. I didn't make a statement like that, not in that form.

Q. Do you deny making it?

(Testimony of Robert K. Mookini.)

A. That's the same way you pulled at me in the Grand Jury room, it's the same thing you did to me—you didn't give me a chance.

Q. Do you know what the word "deny" means?

A. You wouldn't give me a chance in there to explain anything; you were in there trying me instead of me getting up there as a witness.

Q. Did you make this answer, or didn't you?

A. I don't remember making a statement like that.

Q. Do you deny making it?

A. I don't say I deny; a portion of it may have been made; but I don't say I made a statement like that.

Q. Did you say you went down to make arrangements?

A. I went down there with Cunningham.

Q. Did you say that before the Grand Jury?

A. Yes, I said Mr. Cunningham and I was there with McGregor.

Q. Did you say you bought all the stuff?

A. No, I don't think I said I bought all the stuff.

Q. Do you deny making that statement?

A. Yes.

Q. Do you deny making this statement: "I told them to send it out and make two bills, one for subsistence, and the other for extras which could be paid out of the Canteen Fund"?

A. No; if I made a statement like that, Miles wouldn't be running around trying to change it. [722]

(Testimony of Robert K. Mookini.)

Q. Did you make that statement before the Grand Jury, or not?

A. I don't think I made a statement like that.

Q. Will you deny it?

A. Yes.

Q. Continuing with your answer; didn't you make this statement: "So when he had the goods hauled out Cunningham went out with them."

A. Yes.

Q. You make that statement?

A. Yes, I did.

Q. "I was up town".

A. Yes.

Q. You made that statement?

A. Yes.

Q. "Along about September 13th I happened to be called in to Mr. Lloyd's office, not knowing that an investigation was under way."

Q. Did you make that statement?

A. Yes.

Q. "So Mr. Lloyd called me in and asked me about it."

Q. Did you make that statement?

A. Yes.

Q. "I explained it."

Q. Did you make that statement?

(Testimony of Robert K. Mookini.)

A. When he called me in there to clarify the thing, it was on the May 12th voucher.

Q. I am asking you if you made this statement before the Grand Jury, not what you did over in Lloyd's office?

A. Yes.

Q. You made that statement?

A. Yes.

Q. Did you make this statement:

"I told Mr. Lloyd to go out to the Camp and find the vouchers for September 1 where the regulation had been violated."

Q. Did you make that statement? [723]

A. I called Mr. Lloyd's attention——

Q. Wait a minute; let me talk, don't get yourself in Lloyd's office; we're in the Grand Jury room.

A. Yes, I know.

Q. Did you make that statement?

A. I told you in the Grand Jury room that when I was hauled up for the May 12th voucher Mr. Lloyd threw the thing at me; I told Mr. Lloyd I didn't know a thing about it; this is what I told you; then I told Mr. Lloyd, "If this thing is held at me, you better go out and look at the September 1st voucher."

Q. Do you have in mind right now the last portion of this answer I read to you?

A. Yes.

Q. Did you make that statement before the Grand Jury, or didn't you?

A. You only got a portion of that.

(Testimony of Robert K. Mookini.)

Q. I can't read it all at once, Mr. Mookini; did you make that statement?

A. Something to that effect.

Q. You don't deny making it?

A. No sir; I said something to that effect, yes.

Q. "He went out there and grabbed this voucher, and I showed it to him."

Q. Did you say that in the Grand Jury room?

A. I showed him the voucher, yes.

Q. Did you make that statement?

A. Yes, I told you that I showed Mr. Lloyd the voucher.

Q. And didn't you say:

"He said it was with the full knowledge of the Camp Director which he was trying to blame me for."? [724]

A. Yes.

Q. You made that statement?

A. I think I made that statement.

Q. Now, with the May 12th vouchers, that is, you recall there was the original voucher came out with the paper plates and a lot of vegetables, opelu, opae, and a lot of those things?

A. Yes.

Q. You didn't receive any instructions to change that voucher, did you?

A. No; I told you the early part—and I have been consistent all the way through in the other instances that I have said—that Miles discussed that at the Camp.

(Testimony of Robert K. Mookini.)

Q. But you had no instructions to change it?

A. No.

Q. And you didn't go to town for the purpose of changing it?

A. No sir.

Q. And you're just as sure of that as of anything else you've told us?

A. Yes, I'm positive.

Q. Now, bringing your attention to the Mothers' Day affair; before the Grand Jury weren't you asked this question:

"Now, you recall that out there at the Conservation Camp——"

Mr. ULRICH: Same objection; improper cross-examination; impossible to re-direct.

The COURT: Same ruling.

Mr. ULRICH: Exception.

The COURT: Noted.

Q. "Do you recall that out there at the Conservation [725] Camp during this month of May that you had a special dinner or something of an affair for Mothers' Day?"

Q. You were asked that question?

A. Yes sir.

Q. And you replied "Yes"?

A. I did.

Q. And then weren't you asked this question:

"And on that particular day, I believe it was May 12th, a voucher was sent out by Lee Chong for various goods delivered. First I will show you a photostat copy of a purported voucher

(Testimony of Robert K. Mookini.)

from the Lee Chong Company dated May 12th for the C. C. C. Camp at Schofield Barracks. I call your attention to the initials down at the bottom on the line where it says 'Received the above articles' "?

Q. And your answer was "Cunningham's"?

A. You mean you have reference to that one with the lines on?

Q. Yes, Mr. Mookini, that is correct. It's a photostat of that, this one here, United States Exhibit "B".

A. Yes, you showed me this.

Q. In the Grand Jury room?

A. Yes.

Q. And your reply was that these initials were Cunningham's?

A. Cunningham's, yes.

Q. And then you were asked:

"What is the purpose for initialing that?"

And you answered:

"That he has actually received the goods."

A. Yes.

Q. Then the question was:

"The goods listed on this voucher?"

And your answer was "Yes"?

A. Yes. [726]

Q. Then this question was asked you, was it not:

"Under the same date I show you another voucher which is somewhat similar to the one which I have just shown you, only there is some discrepancies. Whose signature is this?"

(Testimony of Robert K. Mookini.)

To which you replied——

A. That it was my signature.

Q. (showing document to witness)

A. Yes.

Q. Your signature?

A. Yes.

Q. You were asked that question and made that reply?

A. Yes.

Q. And then I asked you:

"And how did you happen to receipt for those?"

A. Yes.

Q. And didn't you answer as follows:

"Three days after the goods were delivered. This was the original."

And then you indicated the one——

A. You have reference to the one I signed, now.

Q. All right. "I wasn't there when the goods arrived."

A. Well, that's indicating the first name you showed me.

Q. That's the one that Cunningham signed?

A. Yes.

"This line here represents that the goods had to be changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund."

(Testimony of Robert K. Mookini.)

Q. You made that reply?

A. I made that reply; in this particular instance I remember, too, you cut me short. [727]

Q. I have finished the question.

A. All right, read it all and I'll reply.

Q. I want to get this much.

A. I can tell what you're going to say next; I have an explanation for it.

Q. Did you make that answer, or didn't you?

A. Finish it, and I'll tell you.

Mr. MOORE: May it please the Court, I'd like to have the witness instructed to answer the question. We'll never get through here if we can't get an answer.

Mr. ULRICH: If Your Honor please, this witness, I submit, has a perfect right to explain his answer, and if counsel asks him whether he said a thing he can say whether he said it or not and why he said it and whether he would have said more if given the opportunity.

The COURT: Mr. Witness, at this time Mr. Moore is simply inquiring whether or not you testified so and so in the Grand Jury room, and your reply should as nearly as possible be confined to answering such questions. If there is any special circumstance, the Court will permit you to explain it.

A. Your Honor, the answer is long and it's not finished, and reading portions of it I can't say "yes" or "no" or say anything about it.

(Testimony of Robert K. Mookini.)

Mr. MOORE: Very well, may it please the Court; I'll read the whole answer, and then I'll have to go back and pick it out sentence by sentence.

"I wasn't there when the goods arrived. This line here represents that the goods had to be changed over——" [728]

Q. And, Mr. Mookini, you were referring at that time to the line drawn through those items, were you not, on the one that Cunningham initialed, Exhibit "B"?

A. Yes.

Q. "changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing that he had been to make the change I came in to have it done. This bill was given to me and Cunningham said that the Captain wanted to have it changed, so I compared the amounts and signed the second one as a matter of record for the files out there."

A. Mr. Moore, if I may say it, I don't think that's the truth.

Q. Did you make this answer?

A. I did not say "I came in to have it done." I told you that I happened to drop in there at Lee Chong's office, and this bill was shown to me, and

(Testimony of Robert K. Mookini.)

he said to sign it; I looked over and saw Cunningham; I didn't say I came purposely to have it done.

Q. You deny making that portion of the statement, then, that "I came in to have it done"?

A. Yes; and furthermore——

Q. Is there anything more in that that I have just read to you that you deny?

A. Yes.

Q. All right.

A. When I told you about those lines, the first time I knew [729] about it was September 13th. You hauled me up in the Grand Jury March 19th; I was aware then that this thing had been changed with those lines on there, but previously, when I had been hauled up before Mr. Lloyd, I didn't even know what was on this thing here.

Q. Now, Mr. Mookini, so there'll be no mistake, in the last answer that I read to you is there anything in that other than "I came in to have it done" that you didn't state?

A. As far as the lines on there, I want to say right now I didn't know anything about the lines or anything then.

Q. In other words, you did not state that "This line here represents that the goods had to be changed over into vegetables"?

A. No.

Q. You didn't make that statement?

A. No.

Q. Is there anything else in that answer?

A. No.

(Testimony of Robert K. Mookini.)

Q. You made the other statements in the answer?

A. I told you about how the lines were made.

Q. Did you make the other statements in the answer, or not?

A. That's all that there is in there for me to answer about coming to town.

Mr. ULRICH: I have to interpose another objection on the same line, the utter unfairness of the examination throughout. The witness has no way of knowing what the whole question is, and counsel has.

The COURT: It would appear that you and the Court don't understand this quite alike. I understood when Mr. Moore began this line of examination you stated you wanted your objection to go to this entire line of questioning?

Mr. ULRICH: Yes, Your Honor. [730]

The COURT: And that was permitted, the Court sustained the objection, and you were given an exception as to all this line; so it is unnecessary to take the time to make repeated objections.

Mr. ULRICH: Very well, Your Honor; the exception runs throughout.

Mr. MOORE: Now, Mr. Mookini, I'll read you this answer again, and then refresh your memory, and if there is anything that I read that you haven't already denied stating, kindly stop me while I am reading it and let me know whether or not you made: The answer:

(Testimony of Robert K. Mookini.)

"Three days after the goods were delivered. This was the original."

Then you indicated that that was exhibit "B":

"I wasn't there when the goods arrived."

Now here is the part which you say you deny:

"This line here represents that the goods had to be changed over into vegetables——"

Now, continuing from that statement:

"because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing he had been to make the change I came in to town to have it done."

Q. You didn't say "not knowing"?

A. I said, "Not knowing he had been to town—I didn't even know that he was down at Lee Chong's—but I was aware of the fact that he had left Camp on Sunday night, but I was not aware of him coming to town to make any change." As far as the line was concerned on the bill, I merely [731] stated to you what I was informed in Mr. Lloyd's office, that those things represent changes, so I apprised you of the fact that those lines represent changes of which Mr. Miles had already known he made.

Q. Let's see if I get you correctly; you deny making this part of the statement:

"Not knowing he had been to make the change I came in to have it done."

(Testimony of Robert K. Mookini.)

A. Yes, I deny that.

Q. All right.

"This bill was given to me and Cunningham said the Captain wanted to have it changed, so I compared the amounts and signed the second one as a matter or record for the files——"

Now, the second one——

A. Here it is.

Q. The $231.00 is the second one there?

A. Three of them are $231.00.

Q. This is the one that you referred to as having signed?

A. I think that is the one.

Q. Referring to United States Exhibit "D". And you admit making that latter part of the statement that I just read to you with reference to this particular thing?

A. That I came in there—you didn't put in there where I said that Monty Roque handed me the bill and then as I signed it I told Roque, "What's this?" He says, "Cunningham been in;" and he handed me the bill; I looked on that; I says, "$231.00", and at the same time Cunningham was there as I was signing it; I said, "Jack, is this O. K.?" He [732] says, "Yes, the Captain sent me down"; you didn't put that in there.

Q. Did you say this, or not:

"This bill was given to me and Cunningham said that the Captain wanted to have it changed, so I compared the amounts and signed

(Testimony of Robert K. Mookini.)

the second one as a matter of record for the files out there."

A. I said I signed it—I saw the amount $231.00 —and I signed it as a matter of record for the files.

Q. Will you please answer my question: Did you make the statement, that I just read to you, before the Grand Jury, or not?

A. A portion of it.

Q. The last part?

A. Yes, a portion of that.

Q. What portion of it?

A. You read it again and I'll tell you.

Q. Did you say that line commencing right there? (indicating)

A. Yes.

Q. Now, what portion of that line didn't you say—this line here, this last line of the paragraph?

A. "This bill was given to me"—you didn't say "by Roque".

Q. You said "by Roque"?

A. Yes.

Q. In other words, this is correct so far as it goes, but it didn't have the word "Roque" in there?

A. Cunningham told me it was sent in by the Captain to make changes; he handed me that; I says, "Jack, is this O. K.?" and I signed it.

Q. Get yourself away from the Camp; get yourself away from Lee Chong's office; get yourself away from every place [733] except the Grand Jury room, that's all we're talking about: Did you make this last statement that I read you, before the

(Testimony of Robert K. Mookini.)

Grand Jury, with the exception that there is no record here after the words "given to me" of the words "by Roque"?

A. Yes sir.

Q. Weren't you asked this question:

"And did you have anything to do with the changing of these?"

And I'll read your answer so you can get the whole thing:

"No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess Funds."

Q. That question and answer took place in the Grand Jury room?

A. Yes.

Q. The next question:

"Nevertheless you signed this bill as receiving these particular things?"

And you answered, "Yes"?

A. Well, I signed the bill because you showed me my signature on it.

Q. That question was asked, and you made that reply?

A. Yes, when you showed me the bill.

Q. Wasn't this question asked:

"And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?"

(Testimony of Robert K. Mookini.)

And you answered:

"I can't say they were not true and correct. The amounts seemed to be the same; I didn't check it thoroughly." [734]

A. I think I remember that; I told you that I didn't check it, I didn't know about the amounts.

Q. That was the question and answer?

A. That was the answer there.

Q. Wasn't this question asked you:

"You told us that there were a lot of things, paper cups and plates, on this other voucher which could not be charged to the Mess Funds and you informed Mr. Miles of this, and because of that this thing was changed?"

Your answer was:

"Yes. Mr. Cunningham informed me that Captain Miles sent him down to have it changed."

Q. Was that question asked of you?

A. Read it again.

Q. All right.

"You just told us that there was a lot of things, paper cups and plates, on this other voucher which could not be charged to the Mess Fund, and you informed Mr. Miles of this, and because of that this thing was changed?"

You answered:

"Yes. Mr. Cunningham informed me that the Captain sent him down to have it changed."

(Testimony of Robert K. Mookini.)

A. He may have informed me.

Q. Did you make that statement?

A. I may have made that statement, but that was after I had been apprised of the whole thing.

Q. Was that question asked you in the Grand Jury room, and did you make that reply? [735]

A. I think I made that, that he informed me, yes, sir.

Q. Then the next question:

"And when you knew the voucher came out you knew that it had been changed?"

And your answer was "Yes"?

A. Well, I didn't know that until about——

Q. Was that question asked you, and did you make that answer?

A. You didn't complete the question, you just nailed me down to a certain portion, you didn't let me explain a thing.

Q. Were you asked that question?

A. You didn't finish it; you just asked me a certain portion; I was on trial there, Mr. Moore, if you want to know that.

Q. Were you asked that question, or weren't you?

A. I don't remember you asking me that question.

Q. Do you deny answering that question?

A. I don't know; you read it again.

Q. "And when you knew the voucher came you knew that it had been changed?"

(Testimony of Robert K. Mookini.)

And your answer was "Yes"?

A. No, I don't even know when it was changed, and I deny making that statement.

Q. Then, weren't you asked:

"You knew that the items had been changed?"

And your answer was "Yes"?

A. Later, long after that.

Q. Did you make that statement before the Grand Jury, or not?

A. Yes. I tried to explain to you, but you wouldn't even let me go and do it, you cut me short in my answer. [736]

Q. And wasn't this question asked you:

"And you knew there were items put on there which were not actually delivered so as to cover up the amounts of the paper plates and so forth?"

And you answered:

"I knew the paper plates were; the others were changed to vegetables to put the voucher through."

A. That's after September 13th.

Q. Did you make that; was that question asked you, and did you make that reply?

A. I remember making that statement, and I told you that was after September 13th that I found out that the thing had been changed in that form.

Q. And was the question to which you admitted the answer, was that asked you?

(Testimony of Robert K. Mookini.)

A. Yes; the question was short and abrupt, you didn't give me leeway.

Q. Then weren't you asked this:

"You knew that these particular items in toto were not true and correct?"

And you answered:

"Not according to the original bill."

A. I don't remember you ever saying "in toto" or anything like that.

Q. Do you admit or deny making that?

A. I cannot answer that question because I don't know whether that was even asked of me.

Q. In other words, you refuse to either admit or deny the question? [737]

A. Well, because I don't know whether that—because, when you used those words "in toto" of those I don't think you used those words in there; the only thing you did to me "say yes or no", then you shut me up.

Q. Did I tell you to shut up?

A. You told me "that's enough".

Q. I told you "that's enough"?

A. You showed me two bills, and when I tried to explain you wanted "yes" or "no"; I tried to explain, but you said "Yes, or no?"

Q. Who was the foreman of that Grand Jury, do you remember?

A. I don't know.

Q. Weren't you asked this question:

"You knew in fact they were not correct, didn't you?"

(Testimony of Robert K. Mookini.)

And you answered "Yes"?

A. I don't know whether it was incorrect or not; I knew I had paper plates out there for the dinner, and I had flowers.

Q. Was that question asked you?

A. I don't remember, Mr. Moore.

Q. Will you deny that it was made?

A. I can't deny if I don't know.

Mr. MOORE: I think this will be a good time to take a recess, Your Honor.

The COURT: The Court will be at recess for a few minutes only, gentlemen.

(Recess—10:07 to 10:14 a. m.)

The COURT: The Court does not wish to make any suggestion that might in any way affect the rights of either the Government or the defendants, but I do wish to emphasize [738] if there's any way we can shorten it up we'd like to do it.

Mr. ULRICH: I assure Your Honor I'll do everything I can.

The COURT: You will proceed with your cross-examination, Mr. Moore.

Mr. MOORE: Do you remember this question and answer:

"I understand Mr. Gibson was quartermaster?"

Answer:

"Quartermaster, yes."

A. I did.

(Testimony of Robert K. Mookini.)

Q. "But I understand, Mr. Mookini, later on Mr. Gibson's duties were more or less confined just to the regular quartermaster and that you actually took over the duties of Mess Officer?"

Answer:

"Yes, I did."

A. Yes.

Q. "When you first took over the duties of Mess Officer where were you purchasing vegetables, fruits, and so forth?"

Answer:

"At first my duties as Quartermaster were split up whereby I was handling the open market purchases."

A. That's true.

"That would take in vegetables and outside purchases."

A. Camp Equipment.

"Mr. Gibson was handling all subsistence bought from the Quartermaster at Schofield, such as canned goods and whatever the bakery had to sell."

A. Yes.

Q. Now you say, Mr. Mookini, that you never had any charge account with Mr. Leè Chong until September?

(Testimony of Robert K. Mookini.)

A. Around there; my wife informed me of the correct date. [739]

Q. And you have seen this (indicating) Defendants' Exhibit——

A. (interrupting): I seen that book.

Q. Does this refresh your memory as to when this thing started?

A. About September; it's on there, because my wife handled the account.

Q. Your wife handled the account?

A. Sure.

Q. You didn't start buying anything before then?

A. Well, I bought some for cash; my wife and I drove in at Lee Chong's place once, I think, when she wanted some vegetables because the doctor prescribed for her when she was sick; and another time I think the groceries were delivered to my home, for which my wife paid; it was on a Sunday when I was going swimming.

Q. Didn't you tell the Grand Jury that you started buying there during the latter part of July and August?

A. No, I did not; I said there was a delivery made in June 2nd or 3rd, when I was going swimming, when my wife told me she wanted to get some spinach, and she wanted to get some celery; I telephoned Lee Chong if he had any, he said "Yes"; they brought two or three dollars worth of groceries; and she saw me in my bathing suit, I was

(Testimony of Robert K. Mookini.)

getting ready to go swimming, which would be about 9:30 or 10 in the morning.

Q. Wasn't this question asked you before the Grand Jury:

"And how long had you been buying there?"

Answer:

"Latter part of July and August of last year."

A. Well, I have made some cash purchases.

Q. Was that question asked?

A. Yes; I was not sure of the date; I said "around July or August". [740]

Q. Was that question asked you, and did you make that answer before the Grand Jury?

A. Yes, I did; I was not sure of the date.

Q. Was this question asked:

"Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?"

Answer:

"At that time I was buying because my wife was in the hospital."

A. Now let's get this straight, Mr. Moore,——

Q. Did you make that?

A. No, I did not make that. Let's get this straight;——

Q. You deny that?

A. If you put that "after July" I would tell you that would be correct, but not because my wife was in the hospital then.

(Testimony of Robert K. Mookini.)

Q. Was this question and answer given in the Grand Jury room:

"But before—you never bought there before?"

Answer:

"I bought there because I was broke and he offered me the credit."

A. Mr. Moore, I think that statement is pretty well distorted.

Q. Was that question asked, and did you make that answer?

A. In carrying that question out with the answer, I came personally after July; you told me why I bought from Lee Chong's around that time in reference to around July or August or September; I told you "because I was broke"; I was particularly not ashamed to admit I was broke then; that's why my wife wanted to have an open account with Lee Chong's. [741]

Q. Was that question asked you, and did you make that answer?

A. I don't think——

Mr. ULRICH: If the Court please, I haven't, according to the Court's suggestion, interrupted; I haven't made any objection on this line; I have made previous objections; but on this line of cross-examination no human being can sit here and say absolutely "yes" or "no" whether a certain question, word for word as read and propounded to the witness, was put a year or more ago, and whether a

(Testimony of Robert K. Mookini.)

certain answer as put was responded to that question; it isn't humanly possible; I submit to the Court, as a matter of common knowledge within human memory we can't do that sort of thing. The most the witness can fairly be asked is whether in substance he said this, that, or the other thing. And I object to these repeated questions of the witness, coming back time and time again, asking him to do what nobody could do definitely, say "Yes, word for word, those words were asked, and that answer made." I submit the only proper line of cross-examination that can be made is as to the substance and not the definite words. I object to that reading.

The COURT: The objection is overruled.

Mr. ULRICH: Note an exception.

The COURT: Noted.

Mr. MOORE: Will you answer the question, Mr. Mookini?

A. Read it again.

Q. "But before—you never bought goods there before?"

Answer:

"I bought there because I was broke and he offered me the credit."

A. Will you read the question before that?

Q. The one that you deny making: [742]

"Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?"

(Testimony of Robert K. Mookini.)

Answer:

"At that time I was buying because my wife was in the hospital."

A. And when was the one that you had, about July and August?

Q. The very next question is:

"But before—you never bought there before?"

That is referring to before your wife went in the hospital.

Answer:

"I bought there because I was broke and he offered me credit."

A. Mr. Moore, let's get this straight now. There's another question where my answer came out "July and August."

Q. You want that one?

A. Yes, that's the one.

Q. And that's the contention:

"How long had you been buying there?"

Answer:

"Latter part of July and August of last year."

Q. Then the question was:

"Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?"

The COURT: Now, Mr. Mookini, wherever the term "that time" is used it must refer to your state-

(Testimony of Robert K. Mookini.)

ment at the time as to July or August. Is the Court right in that interpretation of the question, Mr. Moore?

Mr. MOORE: "At that time I was buying because my wife was in the hospital."

A. That's referring to July and August?

Q. Yes. [743]

A. Yes; I wanted to make that sure. The way you asked me was "Prior to" July and August.

Q. The question was, "Prior to that time did you buy", and your answer was, not to the effect that it was prior to July and August, but "At that time—" July and August—"I was buying because my wife was in the hospital."

A. I said, "My wife had just come out of the hospital", not "in the hospital"; my wife had come out July 14th, she was there about a month, from June 18th to July 14th.

Q. Did you answer "I bought there because I was broke and he offered me credit"?

A. Just as I told you, you cut me down "Why did I buy there"; I said "Because I was broke"; I even explained to you that I had to pay a lot of hospital bills, doctor bills and nurses, I didn't have enough cash; so my wife asked me to open an account with Lee Chong; I wasn't sure that they would until the account was opened.

Q. When was it your wife was in the hospital?

A. June 18th to July 14th; and she was under Dr. Milnor's care from May 14th or thereabouts to the day she went to the hospital.

(Testimony of Robert K. Mookini.)

Q. Now, Mr. Mookini, is the milk furnished to the Camp out there a part of the Mess?

A. What's that?

Q. The milk, that's part of the Mess, isn't it?

A. You mean fresh milk?

Q. Yes.

A. Yes.

Q. You bought some milk from Yamane's Dairy?

A. You mean, I bought?

Q. Well, the Camp bought some?

A. Yes, the Camp bought. [744]

Q. I understood you to say on direct examination that you bought all your liquor yourself?

A. I explained that to you, too, yes.

Q. And you bought it at the Waikiki Liquor Store, and the Tacoma Brewing Company, is that correct?

A. Yes, sure.

Q. And some Chinese store; where was that?

A. You can buy anywhere around Hotel Street; you can buy from any of those in there.

Q. I thought you said "on the corner" some place?

A. There's the Corner Liquor Store, right at Maunakea and Hotel.

Q. Is that the one you referred to?

A. I bought there; I bought at other places; I bought at Yama Shoten; I bought at a lot of places; the nearest one you can get to, you can get it at.

(Testimony of Robert K. Mookini.)

(Mr. Moore shows document to Mr. Ulrich and Mr. McGhee).

Mr. ULRICH: No objection.

Mr. MOORE: Did you ever get any booze from Pacific Brewing Company?

A. I told you I did.

Q. I thought you said Tacoma Brewing Company?

A. That's the Tacoma; they handle the Tacoma beer there.

Q. That's the same place?

A. Yes, sure.

Q. You receipted for 3 bottles "Four Roses", 2 bottles "Gordon Gin", and one bottle "Bennetts Sloe Gin" on September 1st?

A. Yes, correct.

Q. That's your signature there (indicating)?

A. Yes, that's mine. [745]

Q. How come this is charged to Yamani?

A. Mr. Moore, I explained that to you, I explained that to Deville; I told you how I came to get liquor there, and I even made reference to concerning that I can get stuff at cost price; he offered me through his card that I can get wholesale prices through him if he bought the stuff and I paid for it; he says, "Any time you want any liquor, I have this card where you can buy, instead of paying $4.00 a quart you can get it for $2.00 or $2.50, whatever the price may be." I illustrated the same thing to you about the Consolidated Amusement Com-

(Testimony of Robert K. Mookini.)

pany, I bought a car for $3,100.00 which cost $4,000.00; and I even bought this coat from Liberty House for $2.50 through a friend.

Q. Was this liquor ever paid for?

A. I haven't got the money; I haven't paid for it, around $23.00; I got a bill from the Pacific Brewing Company that was rendered me at my home.

Mr. MOORE: We'll offer this in evidence, may it please the Court.

Mr. ULRICH: No objection.

The COURT: There's no objection to the offer, I understand?

Mr. ULRICH: No objection.

The COURT: It will be admitted.

(Marked—"United States Exhibit M")

(Testimony of Robert K. Mookini.)

Crim. #8518
U. S. EXHIBIT "M"
Admitted

Cable Address
"PACBREW"

Invoice No.
3100

Telephones
4090
5202

PACIFIC BREWING CO., LTD.
Office: 154 North Hotel Street
P. O. Box 1296—Honolulu, Hawaii

Date 9/1/34

Sold to Yamami
Address Terr. Creamery
Ship to Sold By

Terms:
Your Order No.
Our Order No.

Quantity		Description		Unit Price	Amount
3	only	Four Roses	12/32	2.90	8.70
2	"	Gordon Gin	12/5	3.	6.00
1	"	Bennetts Sloe Gin	12/5	1.45	1.45
					16.15

R. Mookini
C C C

[109]

Mr. MOORE: You knew a Mrs. Lee who used to take laundry out at the Camp?

A. I think so.

Q. And you had something to do with the laundry, did you?

A. I looked after the laundry when it was brought back.

Q. And didn't you even go out and "mooch" a little okolehao off her—didn't you? [746]

(Testimony of Robert K. Mookini.)

A. No, I did not.

Mr. ULRICH: What do you mean "mooch"?

Mr. MOORE: Don't pay for it.

Mr. ULRICH: Why don't you say "go out and took it away from her", then?

Mr. MOORE: You know Doctor Enright, don't you?

A. Sure I do.

Q. You went out there one time with him and got a gallon and didn't pay for it?

Mr. ULRICH: Your Honor, I object——

A. I don't know whether I got gallon. In fact, if you want to know, everyone of them were getting liquor around there.

The COURT: Mr. Mookini, wait until your attorney makes the objection.

Mr. ULRICH: I object; it's utterly irrelevant, incompetent, and not proper cross-examination how many places he may have gotten liquor from, how much he may have paid for it, or whether he paid for it all or not.

Mr. MOORE: I'll take the Court's ruling.

The COURT: Do you want to be heard on the objection, Mr. Moore?

Mr. MOORE: No, Your Honor.

The COURT: The objection is sustained.

Mr. MOORE: You used to borrow money from Lee Chong, didn't you, while you were at the Camp?

A. I don't know whether I did borrow; maybe I asked him for a couple of dollars when Colman

(Testimony of Robert K. Mookini.)

was with me and we wanted to go to lunch, when I didn't have the money—I was short; I told him, "Let me have a couple of dollars, and I'll pay [747] you back." That's natural, if I meet a friend in town and he had money and I was broke, I would ask him to lend me a couple of dollars.

Q. Did you ever borrow as much as $10.00?

A. No, I don't think so.

Q. Just when did this investigation of this case start, if you recall?

A. Around September 13th.

Q. And from then on out, until Miles, Cunningham, and yourself were out, the investigation continued?

A. It started around the 13th, I think that was when Mr. Lloyd—well, it was before then, it was the first part of September, the first that I knew it was around the 13th, then the matter of the vouchers was brought up, then the Canteen account was gone into, then it developed that the Canteen account was short of some money, and into the account some money was transferred from the Camp Director's Fund.

Q. What I am asking you is this; when it started, and when it stopped; we're not asking as to why.

A. I don't know when it stopped; all I know, I got a telephone call on the 29th of September that "in addition to your recreational duties you are assigned to duty as quartermaster"; October 1st I took over the quartermaster duties; I don't know whether the investigation had started, or anything, but I

(Testimony of Robert K. Mookini.)

do remember being suspended after Deville came out there.

Q. And you finally resigned?

A. Well, I saw Deville a lot of times; he tried to scare me on the street; he told me I was in "hot water" and I [748] better confess about doing this; I said, "Mr. Deville, why don't you get this thing straightened out?" I offered to help him, in front of Mr. McGhee; he refused me; in fact, he didn't know about the Lee laundry—I told him about it.

Q. Did you resign, or didn't you?

A. I don't know whether I resigned; there was communications going back and forth, trying to get my pay back; they wouldn't tell me what I was suspended for; I take it for granted I am the "goat".

Q. It's like this military court—you don't know what it's all about?

A. I left it to the council.

Q. Mr. Mookini, showing you United States Exhibit "L"; do you know what that is?

A. Council Book.

Q. You know what that is?

A. Yes.

Q. Are any of the entries there in your handwriting, Mr. Mookini?

A. Yes; after the vouchers are all paid Miles tells me to fix it up.

Q. With the exception of the one which is signed by Major Mahaffy, referring to the account for the month of March——

A. Yes.

(Testimony of Robert K. Mookini.)

Q. Then from there on out, as far as this book goes, you made the entries?

A. Yes. Some Miles made.

Q. Some in here that Miles made?

A. Yes.

Q. Where are those?

A. Here (indicating).

Q. That's the month of September?

A. Yes. [749]

Q. But this, as I understand, this is the Council Book that is kept in the usual course of business out there, which sets forth the various amounts received and the amounts paid out and more or less what they are for?

A. Statements, yes—monthly statements.

Q. It isn't a daily account, but it's for the entire month?

A. Yes.

Q. And this, as I understand it, Mookini, is complete except for the month of September, which is incomplete?

A. Yes.

Q. Referring to the Council Book; that is, the accounts in the Council Book are complete for the months of March to August, inclusive, but are not complete for the month of September?

A. Yes.

Q. These months being in 1934.

A. Yes.

(Testimony of Robert K. Mookini.)

Q. In this investigation, Mr. Mookini, Miles first made charges against you, and then you made charges against Miles?

A. No, I did not make charges against Miles until we was confronted in the office about October 9th; Miles had it all his way all the way through.

Q. In other words, you didn't do anything about it until October 9th?

A. Around about that time I happened to come in, if my memory serves me right, come in to the Clinic; I had a severe cold, around the 9th; I came to the office to report to Mr. Lloyd I wanted two days sick leave; then and there Mr. Lloyd told me, "Bob, what's all this about? Here's Miles wants you to be discharged." I says, "What's [750] the reason?" He says, "I don't know; let's get Miles in." I says, "Yes; he's outside." So he took Miles and I in; then and there Lloyd tried to get me to tell him why Miles was against me. He said to Miles, "I thought you said Bob was a good worker out there and he was a handy man." Then I talked to Miles, and Miles got sarcastic. I said, "Captain, I didn't know you had made all these charges until ten minutes ago, that you are the one that had started all this rumpus against me; I am giving you a chance to clean your shirttail." And next morning I brought out the fact that there was money missing out at the Camp, that he had gone out and borrowed it for his stock and took out a voucher and changed the number on it; it was in the morning about 10 o'clock Mr. Lloyd says, "Call up Miles and

(Testimony of Robert K. Mookini.)

ask him for his resignation." Then he sent me out there that night and told me to take temporary charge of the Camp.

Q. But after that time you were more or less smeared, we might say?

A. No; I played the game clean all the way through, Mr. Moore, I never played it dirty, and I played it right up to the time when the inquiry was finally started; I never breathed anything that I might hold anything against anybody; but he didn't see fit to play the game clean.

Q. Up to September 1st you were very friendly with Miles, weren't you?

A. Well, I was always friendly with anyone; I don't care how much dirt they do to me, I am friendly with anyone until it gets too bad. [751]

Q. Are you friendly with him now?

A. He doesn't want to talk to me; he sees me but he doesn't talk to me. Cunningham talks to me, he says "hello" a[redacted]y "hello" to him. I have no grudge agains[redacted]one.

Q. At this time you have no grudge against Miles at all?

A. No, I haven't any grudge against nobody; but when a man gets up and tries to "hook" me, gosh, you would turn, yourself.

Mr. MOORE: That's all.

The COURT: Before the re-direct, the Court would like to ask the witness a question.

Q. Mr. Mookini, several times in your testimony you've referred to "Mess Fund", and at least one

(Testimony of Robert K. Mookini.)

time, when you were talking about the money that Gabrielson turned over to Captain Miles in connection with that Junior Police picnic you referred to "Camp Director's Fund"?

A. Your Honor, the fund out there is not marked "Mess Fund"; it's marked in the account as "Camp Director's Fund".

Q. It has frequently been referred to as "Mess Fund" in this case.

A. Yes, sir.

Q. That's the same fund you referred to as "Camp Director's Fund"?

A. Yes sir, that is the nomenclature for it.

Q. "Camp Directors Fund" is the way it appears officially?

A. Yes sir.

Q. Some witnesses used the term "Mess Fund".

A. It's identically the same thing. [752]

Q. And when you used the term "Mess Fund" you mean the same thing?

A. I mean the Camp Director's Fund.

The COURT: Proceed.

Mr. ULRICH: Not wanting to seem insistent, Your Honor, at this time I just like to make the record sure on the point that I have been making by at this time moving for leave to inspect the transcript of the record of the Grand Jury, on the ground it is utterly impossible on re-direct to examine this witness as to material points on which he has been examined on cross-examination without that privilege. I'll take Your Honor's ruling.

(Testimony of Robert K. Mookini.)

Mr. MOORE: May it please the Court, as far as I'm concerned, if he wants to see a copy of it—I can't let you have this copy because I have made some notes on it, but I may have a copy.

The COURT: Yes; the Court would suggest, as a matter of courtesy, if you have an extra copy that you present it to counsel.

Mr. MOORE: Well, Mr. Ulrich, I'll turn over to you for your inspection the original transcription of the notes, and ask—I have made some notations on there, which you'll probably see—but I'd like to have that back because it is the original transcription; all I have is one copy.

The COURT: It's the original of which you're using a carbon copy?

Mr. MOORE: Yes, Your Honor, it is. If there's any question about that, we can compare them.

Mr. ULRICH: I'll ask this privilege, if Your Honor please, to proceed with the examination of the witness along [753] other lines, and then be given some opportunity to read this, with the opportunity to re-direct on that.

The COURT: If you have enough to fill in the morning, I would see no objection to recalling this witness at a later time.

Mr. ULRICH: Yes. I don't want to delay the matter at ths time, but I would like the opportunity of continuing the re-direct on this one phase of the matter before we close.

(Testimony of Robert K. Mookini.)

Re-Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Mookini, Mr. Moore on his cross-examination of you has questioned you as to charges and counter-charges which were made as between yourself and Mr. Miles. You said something, but I'm not sure that it is clear in the record, as to just what the nature of the charges that you made against Mr. Miles were. Will you state that a little more difinitely?

A. I was at Lloyd's office at the time when Miles was given the opportunity to face me to state facts why I was supposed to be discharged. Then he hedged; he didn't want to commit himself; he said nothing. Pretty soon he got into an argument that he couldn't get along. I asked him why. He wouldn't say why. So I asked Mr. Lloyd, I says, "Mr. Lloyd, what's all this about?" He says, "Well Bob, Miles has come in here and has made statements that you were not carrying out the duties of the Camp as he saw fit, and he says that there was something wrong with the Mess out there." I says, "Well, Mr. Lloyd, if there's anything wrong I think I should give Mr. Miles the opportunity [754] of turning his resignation in rather than turning him in; I am willing to give him that opportunity of clearing himself." So he told me, "What the hell, you think you're the Governor?" I said, "No, ——"

Q. Who said that?

(Testimony of Robert K. Mookini.)

A. Miles. I said, "No, but I am still playing the game clean." So he challenged me to it; and then and there I produced next morning a promissory note signed by Miles July 16th, produced the Council Book, which was already in Lloyd's office during the investigation, showing where he had certified to a certificate back there of having the money in the bank, produced the voucher there where it was changed with Miles signature on it; Miles took a voucher which was made out to the Camp originally, and he had replaced it on a voucher of July 17th with $205.64, which represented an amount that was owing to the Camp by the Junior Police office for a picnic held June 9th. I told Mr. Lloyd, "Here it is; you check it." They called up the Police Department, and they were shown, Mr. Lloyd and Mr. Matson were shown a voucher showing that Mr. Miles had signed as having received the money on June 21st. And he also showed him the check book there, two entries there where he scratched it and put it back July 17th; and the note showed—which is in Mr. Lloyd's possession, I think, now, or Mr. Moore —that the money was borrowed July 16th, 8 o'clock at night, through my investigation of that particular account. Then and there Mr. Lloyd asked him, "What about this $457.00 and this $19.00 or $21.68?" They did not appear in the Canteen account but was taken out of the Camp Director's Fund. And then Colman and Miles was asked [755] to resign because it did not show what disposition they had

(Testimony of Robert K. Mookini.)

made of the money that was transferred from the Canteen account, and Miles was, particularly, on this money that was not at the Camp.

Q. And the net result of the investigation at that time was that Miles was given an opportunity to resign?

A. To resign; and I was sent out there the day Miles was given the opportunity to resign; I was called by Mr. Lloyd, and I appeared before him; he said, "Bob, go out and take charge of the Camp tonight, as Acting Camp Director, because Miles out there has been given a chance to resign."

Q. And you continued along there until Mr. Deville got along with this investigation?

A. Yes.

Q. And then this order came that there was to be a suspension of you pending the investigation?

A. That came the day that Mr. Deville was out at the Camp.

Q. And then there was the specific order suspending you?

A. Yes.

Q. And that's all you've heard, is that right?

A. Yes.

Q. Were you ever furnished with any charges when you were suspended, or anything like that?

A. When the suspension was handed me in Mr. Lloyd's office it didn't say; it just says "suspended"; no charges.

Q. That's what I mean. The investigation was started, and pending the investigation you were suspended, and you are still suspended?

(Testimony of Robert K. Mookini.)

A. I consider myself discharged now.

Q. Nothing else has happened?

A. No. [756]

Q. There has been no order since then discharging you, except this one suspension, is that right?

A. Yes, with the exception that in January or February the suspension was made effective, and I think October 18th or 17th—I'm not sure—but so far no discharge; maybe I have been discharged for cause; I don't know.

Q. Well, you were suspended, and the suspension was made effective at a later time; I don't quite understand?

A. No. I got a letter from the Department of the Interior making my suspension effective the date the suspension had occurred here; it was around October 18th, because at that time—there were no charges—I made demand for back salary, so they beat me to it and made it effective October 17th.

Q. In other words, the idea is that the investigation started and the suspension order was made and nothing was done until you asked for salary and then official notice of the suspension came through, dating it back to the original date?

A. Yes sir.

Q. And that's all that happened?

A. That's all.

Q. No resignation, discharge, or charges; anything of that kind?

A. No.

(Testimony of Robert K. Mookini.)

Q. (after showing document to Mr. Moore): I show you—this is the notice——

Mr. MOORE: What are those—stenographic notes, Mr. Ulrich?

Mr. McGHEE: They are my notes.

Mr. ULRICH: I show you a letter, on the stationery of the United States Department of the Interior, signed by a [757] man named Burlew, administrative assistant, directod to your attorney, advising you of the suspension; have you seen that before?

A. Yes sir.

Mr. ULRICH: I offer this just as explanatory of the witness' testimony. Any objection, Mr. Moore?

Mr. MOORE: No, I have no objection.

The COURT: It will be admitted; mark it, Mr. Clerk.

(Marked "Defendants' Exhibit 5")

Mr. ULRICH: May I just very briefly give this to the jury?

(Testimony of Robert K. Mookini.)

Crim. #8518.

DEFTS' EXHIBIT #5.

Admitted.

United States
Department of the Interior
Office of the Secretary
Washington.

January 17, 1935.

Earl R. McGhee, Esquire,
Arcade Building,
Honolulu, Hawaii.

My dear Mr. McGhee:

Your letter of December 14 addressed to the Director of the Emergency Conservation Work relative to the claim of Mr. Robert K. Mookini for his salary from October 16 to November 19, 1934, has been referred to me for acknowledgment and reply.

The records of this office show that Mr. Mookini was suspended from his position as a recreational officer at the Wahiawa camp by the Governor of Hawaii on October 17, at the request of the local disbursing officer. This suspension was confirmed by the Secretary of the Interior on January 9, 1935.

Under the regulations of this Department and in accordance with the decisions of the Comptroller General of the United States, Mr. Mookini is not entitled to pay during the period of his suspension.

(Testimony of Robert K. Mookini.)

Mr. Mookini was advised of this action under date of January 9, 1935.

Sincerely yours,

(s) E. K. BURLEW,

Administrative Assistant. [121]

Q. That's the last about what you've heard about what your status may be?

A. I think that is all; I'm not sure; it's so long after that.

Mr. ULRICH: Reserving the right to recall the witness for further questioning after examination of the record of the Grand Jury transcript. [758]

The COURT: Before the witness leaves the stand, Mr. Ulrich; there's one statement I'd like to call your attention to. A few moments ago, when he was being questioned about what occurred in the Grand Jury room, the attorney was inquiring as to matters that occurred several years ago. Do you know when this matter was before the Grand Jury?

Mr. MOORE: The indictment shown on the return, Your Honor, it's a matter of record in this Court when this indictment was returned.

Mr. ULRICH: Nothing in the case goes back further than last year, so far as I know, back to 1934.

The COURT: But the last time you were commenting on your exception you referred to several years ago.

Mr. ULRICH: That must have been inadvertent——

(Testimony of Robert K. Mookini.)

Mr. MOORE: The Grand Jury made the return of this indictment on the 19th day of March, 1935.

Mr. ULRICH: 1935, yes.

The COURT: Mr. Mookini, do you know when you were before the Grand Jury?

A. Yes sir.

Q. When?

A. That's the date.

Q. How many times were you before the Grand Jury?

A. That's the first time I ever appeared before the Grand Jury.

Q. You appeared before this Grand Jury only once, didn't you?

A. Yes sir.

Mr. ULRICH: I don't know what Your Honor has in mind; I was referring to a different time, before the time the witness was testifying, when all these matters were within his [759] knowledge, a prior time when things were happening, many months before, and I may have said "years".

Mr. MOORE: I think what His Honor is thinking about is this; that the Grand Jury at the time this was presented had two sessions, there was one session on a Friday and, as I recall the testimony, shortly before the 15th of March, and because somebody didn't have their income tax we didn't go on in the afternoon so that they could get their income tax in, and then it went over until the following Monday, to about Monday noon, I believe it was

(Testimony of Robert K. Mookini.)

the 19th, in this July term; so that there were two sessions; and I believe, if I am correct, Mr. Mookini, you appeared the first day, did you not?

A. No, it was the same day, because——

Mr. MOORE: The Grand Jury held two sessions on the thing; do you recall whether or not it was on a Friday or a Monday?

A. When was the 19th?

Mr. MOORE: Well, all right.

A. You should have known that, because I came from the Grand Jury and was making a report when I came down; that's the day Deville was out here and he told me he "got the goods" on Miles.

Q. Any more bright remarks?

A. No, I am just telling you that Deville can furnish that.

The COURT: The Court believes that fixes the time near enough. However, if it is desired to have it more exact, it can easily be furnished at a later time.

Mr. ULRICH: It's 11 o'clock; I have a few short witnesses I can put on one after another. [76]

Mr. MOORE: Let's recess, then we can put on three or four witnesses, Your Honor.

The COURT: We'll have a very short recess, then we'll continue until about 11:30 or perhaps a little later.

(Recess 11:01 to 11:07 a. m.)

Mr. ULRICH: Call Mr. Glowenlee.

JOSEPH P. GLOWENLEE

being duly sworn as a witness for the Defendants, testified as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Will you state your name, please?

A. Joseph P. Glowenlee.

Q. Mr. Glowenlee, what is your business connection here in Honolulu?

A. I am a salesman, selling only to the Federal Government through the Quartermaster officers and to the organizations such as companies and batteries. However, I include some other branches of the Federal Government.

Q. Salesman for what concern?

A. The Hurd-Pohlmann Company.

Q. In what line of business is the Hurd-Pohlmann Company engaged, in Honolulu?

A. They sell specialty equipment and machinery.

Q. Your work has been principally with the various military units and Government camps?

A. Yes, exclusively.

Q. During the year 1934 did you have occasion to sell any goods to or have any dealings with the Civilian Conservation Corps Camp at Schofield Barracks? [761]

A. Yes, that was included in my territory.

Q. Whom did you transact your business with at the C. C. C. Camp?

A. Well, I usually transacted all of my business through the main office in Honolulu, and all orders

(Testimony of Joseph P. Glowenlee.)

had to be covered by a purchase order signed by Mr. Lloyd. However, I did have the privilege of leaving some descriptive literature at the Camp in Schofield covering such items which would be serviceable and beneficial to the organization.

Q. Did you ever meet a man named Cunningham in connection with your contacts with the Camp?

A. Yes. I called on Mr. Cunningham quite frequently, because at that time he was the steward in the kitchen and I understand it was up to him to recommend the purchase of certain types of equipment.

Q. Did you have occasion to recall any particular items of equipment that were sold by you to the Civilian Conservation Corps Camp?

A. In the kitchen we sold butcher supplies such as knives, and an electric slicing machine.

Q. An electric slicing machine?

A. Yes sir.

Q. Do you recall having any conversation with Mr. Cunningham at any time relative to any remuneration which he might have received or wanted to receive for recommending the purchase of your goods, or something of that sort?

A. Just about the time when the Conservation Corps was in need of considerable equipment I complained to Mr. Miles, at that time the Camp Director, that it was become quite difficult to sell equipment because the transactions [762] appar-

(Testimony of Joseph P. Glowenlee.)

ently were not as they *should, that* I was being approached for cuts and commissions, which was a practice that I absolutely did not indulge in nor was it tolerated by our firm. A few days later, in making another call at the kitchen, Mr. Cunningham give me quite a verbal "working over", insisting that I was trying to put him in a questionable position, and he admitted at that time having received $5.00 from a member of our firm; he didn't say that it was a rebate on sales, but he stated that this member had given him this $5.00 to buy some cigars with. But there was still another item sold just a few days previously, amounting to $185.00, and Mr. Cunningham told me that he was going to get $18.50 from that sale or know the reason why. My answer to Mr. Cunningham was that I had no authority, or I wouldn't if I did have it, to play any part in such transactions, that he would have to take that up with the president of our firm.

Q. That conversation took place where?

A. At Schofield Barracks, in front of the E. C. W. kitchen.

Q. Do you recall whether that $5.00 was spoken of in connection with any particular sale such as knives, or anything like that?

A. I do not recall whether or not the statement was made that that was a 10% commission on that sale. However, the sale that was made at that time, by someone else, not by me personally, did amount to approximately $50.00.

Mr. ULRICH: That's all.

(Testimony of Joseph P. Glowenlee.)

Cross-Examination

By WILLSON C. MOORE, Esq.

Q. Have you ever talked with Mr. Deville during this investigation? [763]

A. Yes; shortly after I spoke to Mr. Miles, Mr. Deville called on me in the office.

Q. And you told him about this $5.00 transaction, didn't you?

A. Well, by that time Mr. Cunningham—he had told me previously—up to the time that Mr. Cunningham told me, I knew nothing of it.

Q. Well, didn't Mr. Cunningham tell you before Mr. Deville went to see you about this $18.50.

A. Yes.

Q. You didn't say anything to Mr. Deville about this $18.50?

A. No; I wasn't asked; no one came to see me at any time after that regarding the $18.50.

Q. Well, didn't you tell Mr. Deville about this $5.00 transaction?

A. Yes.

Q. And you've learned about this $5.00 transaction the same time you sold this meat cutter, didn't you?

A. Yes.

Q. And when you told Mr. Deville about this $5.00 you also knew about the $18.50, didn't you?

A. No sir.

Q. How didn't you?

A. Because there were a few days separated in between. Mr. Deville came to call on our office

(Testimony of Joseph P. Glowenlee.)

shortly after Cunningham had spoken to me as having received $5.00 and that he was going to get $18.50; but the $5.00 question was the only one that was brought up; the $18.50 statement was not made by me that I can recall to Mr. Deville.

Q. Let's see if I got this straight. You were out to the [764] Conservation Camp, and Mr. Cunningham said that he got $5.00 from a man in your concern for cigars, is that right?

A. Yes.

Q. That was Mr. Beyer?

A. I don't know exactly.

Q. You had a Mr. Beyer there?

A. Yes.

Q. Then after that, you say, Deville came to see you?

A. We're a little bit mixed up on that. Before this all took place I complained to Mr. Miles personally that I was being approached for rebates on sales made to the C. C. C. Camp by individuals who tried to give me the impression that they were influential in throwing orders our way; and shortly after I spoke to Mr. Miles on this matter Mr. Deville came to see me; but after Mr. Deville had seen me the first time Mr. Cunningham stopped me at Schofield and told me about it, and I mentioned the $5.00 fact to Mr. Deville the second time he called on me, but did not mention the $18.50.

Q. But you knew about the $18.50?

A. Yes.

(Testimony of Joseph P. Glowenlee.)

Q. Why didn't you mention that, too; he came up to see you, didn't he, to find out whether men were asking for a cut?

A. I answered Mr. Deville's questions as truthfully as I could regarding the individual.

Q. Wasn't the purpose of Mr. Deville's visit up there, wasn't that to find out if anybody was getting or demanding cuts?

A. Yes, and at that time I tried to give and I gave the absolute truthful statements regarding certain questions that were asked.

Q. And you never said a thing about this $18.50?

A. I do not recall whether I did or not. [765]

Q. Isn't it true, Mr. Glowenlee, that the first time that Mr. Deville went to your place you told him that you didn't know anything about anybody demanding cuts?

A. Yes.

Q. And you had seen Captain Miles before then?

A. Mr. Deville asked me if I had been approached outright or, I believe, had paid out any money; I said I had not; and the individual that came to me and asked me for cuts in making Federal purchases was so ridiculous that I ignored the whole situation; I thought it was silly.

Q. Didn't you tell Mr. Deville on the first occasion that you didn't know anything about such things, that you never heard of any of them?

A. I don't believe I made that broad statement.

(Testimony of Joseph P. Glowenlee.)

Q. And on the second occasion you did not say anything about this $18.50?

A. No, I don't remember whether I did or not.

Q. You didn't have any lapse of memory, did you?

A. Well, my work keeps me very busy, and my territory is quite large.

Q. You're the man that they found out by a tree in Thomas Square that had lost his mind, aren't you?

A. Well, it seems to me that I have a small carryover of a wartime affliction.

Q. Do you know what actually did take place out there?

Mr. ULRICH: Just a moment, if Your Honor please. I submit there's absolutely no occasion for this line of cross-examination at all. This witness has come here and is testifying perfectly truthfully to the best of his ability; [766] if he had a difficulty during the War or since, of that kind, it ill behooves counsel at this time to make it part of his cross-examination and suggesting that he doesn't know anything about what he's given definite evidence concerning. He can ask him as to what he remembers and what was there, but in such a line as this it's utterly out of place, and I suggest it's improper cross-examination.

The COURT: Mr. Witness, if you have any affliction that affects you mentally, you may tell the jury about it.

(Testimony of Joseph P. Glowenlee.)

A. Well, it seems that during the War and for some time after I had a severe attack of influenza; I did have somewhat of a heart condition that at the time caused an extremely high blood pressure and brought on a high state of nervousness, but in fact for some periods, while I was physically able to move about, I was considered mentally out due to that condition. However, I thought that that had been fully healed or had been fully and successfully treated, and it was quite evident that I did have a recurrence of it some several years ago.

Mr. MOORE: You knew, Mr. Glowenlee, did you not, that when Mr. Deville came up to see you on both of those occasions he was endeavoring to ascertain what you knew about members, particularly in the Civilian Conservation Corps, asking for cuts, didn't you?

A. Well, I wouldn't say that I knew that Mr. Deville at that time was the investigator from the office; I knew that he was connected to some extent, but just exactly what his work was I wouldn't be able to say that I knew that absolutely scientifically.

Q. Didn't he tell you that he was a member of the [767] United States Secret Service?

A. Well, that wouldn't make a man an investigator, would it?

Q. I'd like to know what it would be, then; it certainly wouldn't make him anything else. And you never told him about this $18.50?

(Testimony of Joseph P. Glowenlee.)

A. Not that I recall.

Mr. MOORE: That's all.

Re-direct Examination.

By BARRY S. ULRICH, Esq.

Q. The last occurrence that you had of this wartime affliction was several years ago, wasn't it?

A. Beg pardon?

Q. The last occurrence that you had of this wartime affliction was several years ago, wasn't it?

A. Yes sir; since then on medical examination it has been found that the condition is entirely corrected.

Q. You didn't make any memorandum of your conversations with Mr. Deville, did you?

A. No sir; I didn't think it necessary.

Q. You didn't know what use he expected to make of his conversations with you?

A. No sir.

Mr. ULRICH: That's all.

The COURT: You have been able to carry on your usual business for some time, have you?

A. Yes sir; I have been employed steadily by my present firm for 4½ years, and the only time that I have lost through illness was, I believe, 8 days or possibly less, during the recurrence of this condition. [768]

Mr. ULRICH: That's all.

The COURT: Anything further, Mr. Moore?

Mr. MOORE: Nothing further.

The COURT: You're excused, Mr. Glowenlee.

LOUIS HUTCHINSON

was duly called and sworn as a witness for the Defendants, and testified as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. What is your name?

A. Louis Hutchinson.

Q. How old are you?

A. 22.

Q. Do you know Mr. Lee Chong?

A. Yes, I do.

Q. And the Lee Chong Company?

A. Yes, I do.

Q. Did you work for that Company for a time?

A. Yes.

Q. When did you work for the Lee Chong Company?

A. I can't remember the exact date.

Q. I don't care about the exact date; was it last year, or during what general period?

A. During 1934.

Q. What kind of work did you do for Lee Chong Company?

A. I was a truck driver.

Q. And do you remember Mothers' Day of last year, that is, of 1934, do you remember that time?

A. Yes.

Q. Do you remember delivering a load of goods to the C. C. C. Camp together with Mr. Lee Chong about the day before Mothers' Day last year?

A. I do. [769]

(Testimony of Louis Hutchinson.)

Q. Who went along on that load with you?

A. I think it was just myself and Lee Chong.

Q. Did you help in loading the load before it went out to the Camp?

A. Yes.

Q. And did you help to unload the load when it was out there?

A. Yes sir.

Q. When you got out to the Camp that day, as nearly as you can recall, who was there?

A. I seen Mr. Miles and Mr. Cunningham, and there were other boys around there, some C. C. C. boys.

Q. Will you describe how you unloaded that load; who did the lifting out of the truck or wagon?

A. I always get in back of the truck and unload it myself to the boys; Mr. Cunningham stand by with the bill and he checked everything what I called off from the truck.

Q. On that occasion, as you would hand things out would you indicate what they were so that he could check them off?

A. Yes sir.

Q. So that, you helped personally to lift everything off of that wagon?

A. Yes.

Q. And it was taken by some of the boys there and put down?

A. Yes sir.

Q. Now I'll ask you, as you lifted those things off there, whether you lifted off or whether there

(Testimony of Louis Hutchinson.)

was taken off that truck that morning any liquor?

A. No sir.

Q. I'll ask you whether, to the best of your recollection [770] and knowledge, there was any package or packages on that load marked with the name of Mr. Mookini?

A. I don't recall any package marked by the name of Mookini.

Q. Do you know Mr. Mookini, or did you know him—the gentleman here (indicating)?

A. Yes.

Q. I'll ask you this: while you were unloading the goods out there that day, to the best of your recollection did Mr. Lee Chong himself lift any package out of that truck and carry it anywhere?

A. I did not see him lift any packages, because I myself carried the packages from the truck to the boys.

Q. Well, did Mr. Lee Chong carry any package around, so far as you know, that morning?

A. Not that I know of.

Q. Did you see Mr. Lee Chong lift a package, a box about so long (indicating on desk), and so thick (indicating), and so high (indicating), off the truck and carry it over to Mr. Cunningham's and talk to Mr. Cunningham about it, or anything like that?

A. I did not see it.

Q. Well, when you were loading the goods on to the truck down at the store, did you put any liquor on the truck?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. As a matter of fact, all the time that you worked for Mr. Lee Chong did you ever deliver any liquor for him anywhere?

A. No sir.

Mr. ULRICH: I think that's all. [771]

Cross-Examination

By WILLSON C. MOORE, Esq.

Q. Where are you employed—where do you work?

A. Down at the Territorial Hospital.

Q. That's over in Kaneohe?

A. Yes sir.

Q. When did you start working there?

A. September 1st, 1934.

Q. 1934—last year?

A. Last year.

Q. Do you know a man by the name of McGregor?

A. I do.

Q. And while you were working at Lee Chong's he used to stop in at the store quite often, didn't he?

A. Yes, I recall him stopping there several times.

Q. And he's some relation of yours, isn't he?

A. Yes sir.

Q. What relation is he?

A. He's my uncle.

Q. Have you ever talked to Mr. McGregor about this case—your uncle, I mean?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. Never talked to him once?

A. No sir.

Q. Ever talk to Mr. Lee Chong about it?

A. No sir, because I stayed down at Kaneohe altogether, down at the quarters.

Q. Did you ever talk to Mr. Mookini about it?

A. No sir.

Q. Never talked to Mr. Mookini about it?

A. No sir.

Q. Ever talk to Mr. Ulrich about it?

A. Just this morning when he called me in at his office. [772]

Q. You talked to Mr. Ulrich in his office this morning?

A. Yes sir.

Q. Ever talk to Mr. Deville, this man here (indicating) about it?

A. Yes.

Q. And do you remember where the first conversation was with Mr. Deville?

A. Yes.

Q. And where was that?

A. Down at the Armory.

Q. At the Armory?

A. No; down at the Territorial Hospital.

Q. Where you work. You're a guard or something over there, are you not?

A. Yes sir.

Q. And, he had a Filipino man by the name of Rivera, did he not?

A. Who had?

(Testimony of Louis Hutchinson.)

Q. Mr. Deville; wasn't there a man with Mr. Deville?

A. At that time, no.

Q. There wasn't any, over at the Territorial Hospital?

A. No sir.

Q. Just you and Mr. Deville?

A. Mr. Deville.

Q. Now, do you remember telling Mr. Deville over there at Kaneohe that on that Mothers' Day load there was a box——

Mr. ULRICH: Might have been a dozen or more.

Mr. MOORE: Well, wait until I finish the question:—with Mookini's name on it?

A. I don't recall, sir.

Q. Well, would you deny that you told Mr. Deville that? [773]

A. I deny.

Q. Now then, the next day you came over and made a statement at the Armory, didn't you?

A. Yes sir.

Q. To Mr. Deville?

A. Yes sir.

Q. Between the time you saw Mr. Deville at Kaneohe and the time you saw Mr. Deville at the Armory, did you talk to any of these men or your uncle Mr. McGregor?

A. No sir.

Q. Never said a word to any of them?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. Who employed you down there at this place; who gave you the job?

A. Down at the Territorial Hospital?

Q. No; down at this store?

A. Mr.—I forgot his Chinese name—Chun Yau Chee.

Q. He's the man that gave you the job?

A. Yes sir.

Q. Now, this truck that you take out and deliver these goods on, is that an open truck, or a closed truck?

A. It's all open, but it has sides; but it's all open.

Q. In other words, it's got a roof on top, but there's no sides; don't it open on the sides?

A. There's no roof on top of the truck, only where I am driving.

Q. Just a roof over the driver's seat?

A. Yes sir.

Q. And while you were unloading this truck where was Mr. Lee Chong?

A. I don't know, because I was busy unloading the truck.

Q. Is it possible that in all your business in unloading this truck that Mr. Lee Chong may have taken a box out of that truck? [774]

A. Well, he might have, I don't know.

Q. In other words, you don't know whether he took one off, or not?

A. Not from the back of the truck, because I was there at all times.

(Testimony of Louis Hutchinson.)

Q. But you do know that he didn't take one off the hind end, is that it?

A. Yes sir.

Q. But this truck—you can reach over the sides, can't you?

A. No, you can't.

Q. What kind of a truck is it?

A. It's a Packard truck; it's built very high.

Q. Built very high?

A. Yes sir.

Q. Can you stand on the running board and reach in the back end?

A. You still have a hard time of reaching in.

Q. How high are the sides?

A. Well, I would say about 10 feet from the ground, I think it is, if I'm not mistaken.

Q. The sides of this truck run up 10 feet high?

A. Between 9 and 10, I think it is.

Q. Higher than that door there (indicating door to Judge's chambers)?

A. If I'm not mistaken, about the door.

Q. About the top of the door?

A. Yes sir.

Q. The sides run away up to there?

A. Yes sir.

Q. And there's no roof over it?

A. No roof over it.

Q. And you were at the back end taking things out?

A. Yes sir. [775]

(Testimony of Louis Hutchinson.)

Q. And there was nobody else in the back end while you unloaded?

A. Nobody else.

Q. A lot of these goods, were they boxed up?

A. Some of them were sealed up, but we always know what's in it.

Q. Some of them were sealed up—withdraw the question. When you were unloading, your idea was to get that truck unloaded and get through, wasn't it?

A. Well, I had to call out what I put out, so Mr. Cunningham can check it on the bill.

Q. Mr. Cunningham was there checking it?

A. Yes sir.

Q. And as you called these off Mr. Cunningham would stand right at the back of the truck, and some of the boys that work at the Camp would receive these?

A. Yes sir.

Q. And Mr. Cunningham would check them off?

A. Yes sir.

Q. Then they took them on in, and then you would hand them the next package?

A. Yes sir.

Q. And you don't recall any package for Mr. Mookini?

A. I don't recall.

Q. And when you got through, there was not another single box left in the truck?

A. No sir.

(Testimony of Louis Hutchinson.)

Q. And do you recall whether you were the man that took the first box off?

A. From the back of the truck?

Q. Yes.

A. Yes; I am the only one in the truck there.

[776]

Q. Nobody went to the truck before you did?

A. No sir.

Mr. MOORE: That's all.

Mr. MOORE: One more question. What kind of a box were these oysters in?

A. I don't think there were any oysters; I can't recall whether they had any oysters that day or not, it being so far back.

Q. Well, did you call off oysters?

A. I can't remember, sir; I think there was some——

Q. Did you call off flowers?

A. Yes, I can remember the flowers.

Q. Strawberries?

A. I can't say for sure.

Q. You don't recall strawberries?

A. No, I don't recall; and it has been always the custom when we enter Schofield there's two guards at the gate that stop the truck and investigate what's on the truck before letting us in.

Q. You mean to tell me that the guards go through all the truck and take up all the boxes and see what's in it?

A. No, not all; they just see if anything unusual about the truck.

(Testimony of Louis Hutchinson.)

Q. In other words, they go up to the truck and kind of give it the "once over", is that it?

A. Yes sir.

Q. But they don't lift up things, they don't do that?

A. No sir.

Mr. MOORE: All right; that's all. [777]

Redirect Examination

By BARRY S. ULRICH, Esq.

Q. You say you do remember the flowers?

A. Yes sir.

Q. How were they put up—in some sort of box?

A. They were in boxes.

Mr. ULRICH: I think that's all.

The COURT: The Court will now take an adjournment until 9:00 o'clock tomorrow morning. Be back in your places promptly at that time, gentlemen of the jury.

(Adjourned—11:43 a. m.) [778]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Friday, May 24th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate that the jury is present.

Mr. ULRICH: Ready for the defendants; and we do also stipulate that the jury is present.

The COURT: Let the stipulation as to the presence of the jury be entered.

Mr. ULRICH: I'll call at this time Mrs. Mookini.

MRS. MARIE MOOKINI

being first duly sworn as a witness for the Defendants, testified as follows: [779]

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Your name is what?

A. Marie Mookini.

Q. You are, are you not, the wife of Robert K. Mookini that sits here, the defendant in this case?

A. I am.

Q. How long have you been married to Mr. Mookini?

A. In 1928.

Q. You are, are you not, in the employ of the Consolidated Amusement Company yourself?

A. Yes.

Q. You met Mr. Mookini when you were both, I believe, in the employ of the Consolidated Amusement Company; is that right?

A. Yes, that's right.

(Testimony of Mrs. Marie Mookini.)

Q. And when he left the employ of the Consolidated Amusement Company you remained on with them, did you?

A. Yes.

Q. And are still employed by the Consolidated Amusement Co.?

A. Yes, I am still there.

Q. Mrs. Mookini, in the month of June or April of last year—I'll say the month of April of last year, where were you and Mr. Mookini living?

A. On Fitzpatrick Apartments.

Q. Fitzpatrick Apartments, at Waikiki, is that right?

A. Yes.

Q. And at that time how large a family was there; how many people in your home?

A. My son, and my nephew, and my niece. [780]

Q. And Mr. Mookini?

A. Yes.

Q. You recall, do you, that Mr. Mookini at some time in the early part of last year became connected with the Civilian Conservation Camp at Schofield Barracks?

A. Yes.

Q. Now Mrs. Mookini, I'll ask you to state whether or not you had an operation some time during the Summer of 1934, a major operation, and, if so, when that was?

A. June 18th.

Q. June 18th, that's the day you were operated on?

(Testimony of Mrs. Marie Mookini.)

A. I was operated on June 18th, and admitted to the Queen's Hospital on the 17th.

Q. You went to the Queen's Hospital on the 17th?

A. On a Sunday night.

Q. Your surgeon, I believe, was Dr. Milnor, of The Clinic, is that right?

A. Yes.

Q. How long were you in the hospital?

A. From June 17th up to July 14th.

Q. There has been evidence in this case, Mrs. Mookini, relative to *grocers* which were supposed to have been sent to your home by Lee Chong Company; do you know Mr. Lee Chong or have you ever seen him before, the other defendant, who sits here (indicating)?

A. Yes.

Q. You have seen him?

A. Yes.

Q. Now, will you state to the jury just what the extent of your or your husband's dealings, so far as you know, with the Lee Chong Company was during the Summer of last year; when do you recall first getting anything at all from [781] Lee Chong or the Lee Chong Company?

A. Some time in May, the latter part of May.

Q. And was it a cash transaction, or otherwise?

A. Cash; I buy my groceries for cash.

Q. Do you recall ever getting anything from him or having your husband bring anything from there

(Testimony of Mrs. Marie Mookini.)

otherwise than cash purchases before, say, September of last year?

A. Beg your pardon?

Q. Did you ever have any dealings with Lee Chong Company except on a cash and carry basis, as we might say, before September?

A. Before September, yes, everything we bought was cash.

Q. Do you recall the circumstances under which any account was opened with Lee Chong Company?

A. Yes, in September.

Q. You remember how it happened that you opened an account?

A. Yes, because I had a lot of obligations to meet, and doctors bills and hospital and nurses, and we asked Mr. Lee Chong to extend us credit.

Q. I show you an exhibit in this case, being Defendants' Exhibit 4, purporting to be the account with Mr. Mookini on Mr. Lee Chong's books, and ask you if that accords in a general way with your recollection of the goods that were sent to you by Mr. Lee Chong on this credit basis?

A. Yes.

Mr. MOORE: May it please the Court, I don't like to delay things, or anything of that kind, but we've had straight through here leading questions "Did you ever deal in anything up until September", and so on and so forth, and then here [782] we come to an account book, and he takes and shows her an account book without even exhausting

(Testimony of Mrs. Marie Mookini.)

her recollection or anything of that kind. May it please the Court, I object to this line of examination.

Mr. ULRICH: Well, I'll submit the question, if Your Honor please. I think it's reasonable to ask her whether or not she recognizes this as a fair statement of her account between herself and Lee Chong. Of course she wouldn't remember every item; she probably has seen bills from time to time. I'll take the Court's ruling on the question. There's nothing vital in leading a witness; it's permissible within reasonable limitations. Perhaps I had better withdraw the question and ask her this:

Q. Were statements sent to you from Lee Chong Company?

A. Yes.

Q. Did you get bills?

A. Yes.

Q. I now show you this account and ask you whether or not that accords with your recollection of the bills you got from Lee Chong?

A. It does, exactly.

Q. Mrs. Mookini, a certain witness has testified in this case to the effect that in the month of July there was ordered and sent to Mr. Mookini as his personal groceries, groceries in the amount of over 100 dollars. I believe you've said that you were in the hospital after a certain time?

A. Up to July 14th I was in the hospital.

(Testimony of Mrs. Marie Mookini.)

Q. Up to the middle of the month you were in the hospital?

A. Yes.

Q. After you came back from the hospital and, so far as you [783] know, during the time you were at the hospital, were groceries in anything like that amount used in your home?

A. No, never.

Q. In any other month did you ever have occasion to make use of groceries in the amount of $100.00?

A. Never was my grocery bill amounting to $103.00 or $100.00.

Q. During the month of April where were you buying your groceries?

A. At K. Miyata's store, on King Street, and N. Aoki.

Q. They are right close to where you live?

A. Yes, at Waikiki.

Q. How were the groceries bought in your home during the month of April and until you went to the hospital?

A. How were they bought?

Q. Yes; who did the buying?

A. I did the buying, for cash.

Q. Did you have occasion at any time to have Mr. Mookini bring things home for you?

A. Very seldom, unless I asked him to, and that was paid for.

(Testimony of Mrs. Marie Mookini.)

Q. This same situation existed after you came back from the hospital?

A. Yes.

Q. Excepting that you started this charge account with Lee Chong?

A. Yes, in September, because I couldn't see my way clear to meet all the obligations that we had.

Mr. ULRICH: I think that's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. What do you do at the Consolidated Amusement? [784]

A. I am a stenographer.

Q. And your hours of employment are what?

A. 8 to 4.

Q. Daily?

A. Except Saturday.

Q. And when do you get through on Saturday?

A. 12 o'clock every third Saturday—one o'clock every third Saturday, and 12 o'clock two Saturdays. We have three stenographers up there, and we all shift.

Q. Meaning, as I take it, three Saturdays you say you work until——

A. Three Saturdays I go home at 12.

Q. And the next Saturday you stay until one?

A. Yes.

Q. You say you first started purchasing from Lee Chong in May of last year?

A. Yes.

(Testimony of Mrs. Marie Mookini.)

Q. And you didn't start—you never purchased there before, did you?

A. No.

Q. Did you do the purchasing at Lee Chong's?

A. Beg your pardon?

Q. Did you do the purchasing at Lee Chong's?

A. Yes, sometimes.

Q. Sometimes you did?

A. Just on one occasion, when my husband was home on a Sunday, and I told him—he was going out swimming, and I told him to get me some groceries; and when Mr. Lee Chong delivered them I paid for them.

Q. Your husband then went down to Lee Chong's and ordered them?

A. No, he did not go to Lee Chong's; he telephoned to [785] Mr. Lee Chong; he was home on a Sunday from the Camp.

Q. And you never—did you ever go to Lee Chong's to buy groceries?

A. I did sometimes, yes.

Q. And he delivered them for you?

A. No, I delivered them myself; I took the groceries home myself.

Q. Did your husband ever take them home?

A. Not that I remember.

Q. The best of your recollection is that you always took the groceries that you ordered yourself?

A. Yes.

(Testimony of Mrs. Marie Mookini.)

Q. And the only exception to that was the time, the first time you bought, when your husband called up Mr. Lee Chong on a Sunday——

A. Yes, when he was home from the Camp.

Q. When he was home from the Camp; and on that occasion Mr. Lee Chong delivered them?

A. Yes.

Q. And you paid him cash for them?

A. Yes.

Q. And thereafter, right up until you opened this charge account, you were trading there quite a bit?

A. Very seldom.

Q. Very seldom?

A. Yes.

Q. And your husband never, to your knowledge, ever brought home any groceries?

A. No, not to my knowledge.

Q. He doesn't assist in the family shopping at all?

A. Well, I am the budgetarian in my family.

Q. You hold the sack, is that it? [786]

A. What do you mean "sack"; I don't understand.

Q. In other words, you take care of the family exchequer?

A. Yes, I take care of our budgeting, if that's what you mean.

Q. In other words, you take care of the money and spend it?

(Testimony of Mrs. Marie Mookini.)

A. Yes, I do; I don't spend it.

Q. What?

A. I spend it to buy my groceries and whatever I need.

Q. That's what I mean, Mrs. Mookini; I don't mean that you take the money and throw it out in the street or anything like that, but that you are the one that takes care of the family moneys. You say you were in the hospital from June 17th to July 14th; during that time was your niece or nephew and your son living out to this apartment?

A. My nephew was on Kauai.

Q. How about your niece?

A. She was there.

Q. And your son, he was where?

A. He was with my niece.

Q. And where were they living?

A. Who?

Q. Your husband, your niece, and your boy?

A. He was down the Camp when I was in the hospital.

Q. The boy was down at the Camp too?

A. Yes.

Q. The boy lived out at the Camp with Mr. Mookini?

A. Yes.

Q. He had all his meals with Mr. Mookini?

A. I guess so; I wasn't there, I don't know.

Q. And you didn't keep this apartment at all while you were in the hospital?

A. Who I kept?

(Testimony of Mrs. Marie Mookini.)

Q. Well, the family? [787]

A. Why yes; I wasn't going to throw her out.

Q. Throw who out?

A. My niece; she was home; I just told you.

Q. She was living there?

A. Yes.

Q. How old is your niece?

A. 24.

Q. And does she work?

A. She stays with me.

Q. She doesn't work?

A. No.

Q. But you say, during the time you were in the hospital, instead of the boy staying with your niece at your apartment he was out with the boy's father?

A. Yes; there's nothing wrong in that.

Q. What's that?

A. I say, I don't see anything wrong in that.

Q. I don't see anything wrong in it, particularly, myself. Who bought the groceries during that period of time for your household out here?

A. We didn't buy any groceries for the house; she had her meals out.

Q. That is, your niece had her meals out?

A. Yes.

Q. And how old is this boy of yours?

A. 10.

(Testimony of Mrs. Marie Mookini.)

Q. Was there only one delivery made to your house by Lee Chong of groceries during this period of time?

A. Yes.

Q. And did he himself deliver it?

A. Yes, he himself delivered it to my house.

Q. Do you know a little boy by the name of Hutchinson who used to work for Lee Chong?

A. Who?

Q. Hutchinson. [788]

A. I don't know if I do; I don't recall the name.

Q. Do you know Mr. McGregor?

A. No.

Q. This Hutchinson boy didn't go out and deliver groceries to your place?

A. No.

Q. He never did?

A. No.

Mr. MOORE: That's all.

Redirect Examination

By BARRY S. ULRICH, Esq.

Q. Mrs. Mookini, I don't imagine you went out and examined the wagon to see who was on the wagon; you don't know whether any delivery boy was on the wagon or not; you knew the man that you saw bring the goods in the house was Lee Chong?

A. Yes.

(Testimony of Mrs. Marie Mookini.)

Q. Who may have driven the car or sat on the driver's seat you don't know?

A. I don't know, because I never went out to look on the seat.

Q. This little boy, I believe, is Mr. Mookini's son by a prior marriage, is that right?

A. Yes.

Q. Were there ever any groceries delivered in a large quantity at your place at all that you didn't use for the family, or anything of that kind?

A. No, never.

Q. You didn't store groceries around the house?

A. There's no room for storage, the house is so small.

Q. Nothing of the kind ever happened, did it?

A. No, never.

Mr. ULRICH: That's all. [789]

Mr. ULRICH: Mr. Mookini, I believe, was on the stand for further direct examination.

ROBERT K. MOOKINI

being recalled to the witness stand for further direct examination, testified further as follows:

Mr. ULRICH: Mr. Mookini, on your cross-examination you were cross-examined relative to certain questions and answers that it was stated were put to you and received from you on the occasion of your examination by the Grand Jury. I

(Testimony of Robert K. Mookini.)

want to call your attention to certain of those questions and answers which I now have before me, and particularly to those questions and answers concerning which the prosecuting attorney examined you. He called your attention in the first instance, as I recall it, to the following questions and answers:

"And how did you happen to receipt for those?"

That's on page 2; referring to one of the receipts for those bills which had been shown to you, that is, the corrected bill or the changed bill on the first order. And your answer was:

"Three days after the goods were delivered. This was the original. I wasn't there when the goods arrived."

Q. What goods were you referring to?

A. The goods of May 12th.

Q. The Mothers' Day order?

A. Yes sir.

"This line here represents that the goods had to be changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund." [790]

Q. Particularly this language:

"This line here represents that the goods had to be changed over into vegetables."

The prosecuting attorney called your attention at that time to United States Exhibit "B", and I be-

(Testimony of Robert K. Mookini.)

lieve you told him that you were referring to these lines that were drawn on that exhibit, in that answer; is that right?

A. Yes sir.

Q. As a matter of fact, when did you first know that such lines had ever been put on that paper?

A. About September 13th, when I was called before Mr. J. W. Lloyd.

Q. And when you said that this line meant it "had to be changed", were you talking about anything you knew at the time the change was made?

A. No; I tell you Mr. Moore asked me, "Do you know what those lines represent?" Well, I had been already informed on September 13th that these lines represented changes.

Q. In other words, you were testifying, or were you, to something that you learned as a result of the investigation which had been later carried on?

A. Yes, after I had been called before Mr. Lloyd.

Q. Going on:

"because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund."

When did you learn that Captain Miles was informed of the fact that those things couldn't be bought out of the Mess Fund? [791]

A. Well, during the first discussion that took place before the Mothers' Day dinner.

(Testimony of Robert K. Mookini.)

Q. You had known that all along?

A. Yes.

Q. Now then, going on with your answer:

"Mr. Cunningham had instructions to take this to town and have it changed."

When did you find out his having been instructed to take it down and have it changed?

A. Not at that time; not until September.

Q. Then you said:

"Not knowing he had been to make the change I came in to have it done."

Now, Mr. Mookini, as you recall the words or the questions or the answers that you gave at that time, did you and could you have said exactly that?

A. That's why I said that statement is distorted.

Q. For example, just changing the sound a little by: "Not knowing he had been to make the change, I came in to town"; is it possible you might have said that?

A. Because I came into town to take my wife to The Clinic.

Q. But what words the stenographer may have put down, you don't know?

A. No, I don't.

Q. Did you ever have a chance to go over this and see whether this stenographer had properly transcribed your answers as given?

A. No; that's the first time I have seen this document.

(Testimony of Robert K. Mookini.)

Q. Have you had occasion to dictate matters to a stenographer?

A. I have had about nine years of that experience, dictating.

Q. Have you ever found it necessary to make rather radical changes in typewritten matter? [792]

A. I think my wife will bear me out as to that.

Mr. MOORE: Let the witness testify, and not counsel; one question after another leading and suggestive, may it please the Court. Leading a bit isn't so bad, but one right after another I certainly object to that.

The COURT: There's no unanswered question before the Court at this time.

Mr. ULRICH: Then the remainder of the answer which counsel called to your attention:

> "This bill was given to me and Cunningham said that the Captain wanted to have it changed."

Now, when did you know that the Captain had ordered Cunningham to change it?

A. Around September; later.

Q. Were you doing more than attempting to tell the prosecutor at the time what your then knowledge was, that is, when you testified before the Grand Jury?

Mr. MOORE: May it please the Court, I object to that question as leading and suggestive and putting the words in the mouth of this witness. He can ask him what he thought at that time.

(Testimony of Robert K. Mookini.)

The COURT: The question is leading; the objection is sustained.

Mr. ULRICH: Well, state in your own words what you were trying to do when Mr. Moore was questioning you?

A. I was informing him of what I was informed; I was telling Mr. Moore in the Grand Jury room what I was informed in Mr. Lloyd's office. When Mr. Lloyd brought this thing to my attention I was hauled up there; I didn't even know anything existed like that. [793].

Q. The next question:

"Did you have anything to do with the changing of these?"

Answer: "No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess funds."

Question: "Nevertheless you signed this bill as receiving these particular things?"

Answer: "Yes."

Question: "And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?"

Answer: "I can't say that they were not true and correct. The amount seemed to be the same. I didn't check it thoroughly."

Q. Is that substantially what you said at that time?

(Testimony of Robert K. Mookini.)

A. Yes, about; something to that effect.

Q. Here is another question, for example, which was propounded to you by the prosecuting attorney:

"And when you knew the voucher came out you knew that it had been changed?"

When did you first know even about the voucher coming out, so far as that's concerned?

A. What voucher?

Q. They were talking now about the Mothers' Day voucher.

A. In September the first I found out.

Q. The only contact you had with it—when was the only contact you had had with it?

A. In September, that's how I found out those things were in this mess like this. [794]

Q. And, aside from the time when you had put your name to this paper that was handed to you in Lee Chong's office and Cunningham saying it was all right, had you ever seen this thing, or known what was done with it, or when it came out to the Camp, until later?

A. No.

Q. Then there was some testimony, and another question and answer here about Mr. Lloyd, this way:

"I instructed him to make two bills. On May 16th Mr. Lloyd came down and took us over the coals for buying stuff which was like oysters."

(Testimony of Robert K. Mookini.)

Now, was there any talk, as you recall, about two bills in connection with the oysters or the Mothers' Day order?

A. Well, I think in that discussion Miles says,—I didn't have anything to do with it—"the only way you can handle that is to have a segregated account." But this May 16th, about Mr. Lloyd coming out there——

Q. What was the conversation; what was Mr. Lloyd's talk about?

A. He came out there and generally complained that the boys were living better than the boys living in the Royal Hawaiian; he says, "They are getting too good feeding; it might make bad feeling because our meals were better than the men at the barracks; there may be some criticism."

Q. Was there any talk about oysters not having been oysters and about having changed the bill? One item says about oysters.

A. He just at random spoke——

Q. I mean, was there any talking about what we're talking about now, about changing oysters into flowers? [795]

A. No, no.

Q. Just that oysters represented too high a form of living?

A. Yes.

Q. Then, another part of the answer particularly called to your attention by the prosecuting attorney:

"So in the meantime we were having——"

(Testimony of Robert K. Mookini.)

That's the same answer, a little further along, page 4:

"So in the meantime we were having several meetings, Miles, Cunningham and myself, around the office; some of the boys were there, and even then I apprised them of the fact that we couldn't buy anything out of subsistence funds that was not food. So he authorized me to go ahead. The first estimate submitted"——

And did you go ahead and estimate these things?

A. I did.

"The first estimate submitted to Miles was about $800.00, which was ridiculous. In getting other figures it was reduced to 600 and some odd dollars. He said to go ahead. So . . . I went down to make the arrangements and bought all the stuff"——

Mr. MOORE: "Before September 1", isn't that in there?

Mr. ULRICH: "So before September 1 I went down to make the arrangements and bought all the stuff, told them to send it out and make two bills, one for subsistence and the other for extras to be paid out of the Canteen Fund. So when we had the goods hauled out Cunningham went out with them. I was up town."

Q. Now, when you went down to make the arrangements, the [796] language attributed to you here was that the arrangements included actually

(Testimony of Robert K. Mookini.)

buying the stuff; it reads, "to make the arrangements, bought all the stuff". Now, did you say exactly that—that you "bought all the stuff"?

A. No; I had reference to the discussion of the estimate—substantiating the estimate.

Q. If the very similar sounding language "to make all the arrangements about how the stuff" had been used, that might have represented what you really said? That's a leading question; but could it have been possible that you said something of that kind?

A. It may have been; I'm not sure.

Q. "Told them to send it out", and so forth and so on. In connection with any of this phase or of making arrangements down town with anybody, did you have any discussion with anybody about how this thing was to be billed?

A. No.

Q. Anything that may be reported in there giving that impression doesn't accurately represent what you've testified to here, does it?

Mr. MOORE: I object to this.

Mr. ULRICH: I withdraw that——

Mr. MOORE: I don't like to keep interrupting, but I certainly object to this putting the words in his mouth time after time after time, right down the line. May it please the Court, I'll ask the Court, so that I don't have to keep interrupting, to instruct Mr. Ulrich to refrain from using that sort of stuff; let the witness testify.

(Testimony of Robert K. Mookini.)

The COURT: Counsel knows what questions are proper, as well as the Court does or yourself. [797]

Mr. ULRICH: I do, Your Honor; and in the matter of conducting an examination of this kind I am trying to do it as best I know how. Much more tedious, of course; I can get it all from the witness, and I'll try to do it that way.

(At request of Mr. Ulrich, Reporter reads last question)

Q. Did you testify to anything or did you intentionally say anything by which you wanted to mean that you had any discussion with dealers in town about making the charge one way or another?

Mr. MOORE: Same objection, Your Honor.

Mr. ULRICH: I don't think that's objectionable, Your Honor. I have called his attention to these questions and answers and I have asked him whether he intentionally said something like that before the Grand Jury. I think that's proper; I don't know how else I can get the question to him.

Mr. MOORE: Very well; get it over with.

The COURT: Isn't it to be presumed that he intentionally said what he did say?

Mr. ULRICH: That he intentionally said what is reported here. Of course, what he did say is another thing.

Q. Did you intend to say anything of that kind?

A. No, I never discussed about how things were to be charged, because Miles was the one that had charge of or was custodian of the funds out at the Camp.

(Testimony of Robert K. Mookini.)

Q. I call your attention to another part of the examination before the Grand Jury, and to this question and answer:

"There is an item on that voucher under date of May 12th, 1934, of 500 fresh oysters. Do you know whether or not those oysters were ever delivered?" [798]

Mr. MOORE: What page is that, Mr. Ulrich?

Mr. ULRICH: Five.

(Answer): "It was for flowers, that's what I was informed of the change of that voucher."

(Question): "Our information, Mr. Mookini, is that those 500 oysters were for a case of liquor which came out there and was delivered into the kitchen, stayed there possibly a half hour or more, and then by one of the assistant cooks was taken to your quarters?"

Do you recall that question being propounded to you by Mr. Moore at that time?

A. Something to that effect.

Q. And your answer was:

"I don't think it is the truth."

In the course of that examination did Mr. Moore question you at all about a delivery of liquor such as has been testified to in this case, namely, not a case of liquor, but three bottles of whiskey and three bottles of gin?

A. No.

Q. Did he question you about a case of liquor, or liquor, that had been left, not for half an hour, but all day?

(Testimony of Robert K. Mookini.)

A. No, he did not.

Q. Or about liquor that had been taken across by Mr. Cunningham and somebody else?

A. Referring to where I said I was informed of the change for the flowers, I want to say, in September was the first I knew that oysters were for flowers.

Q. "Was there a case of liquor ever delivered to your quarters?" [799]

(Answer): "I bought my own."

"Q. Did you bring it out there yourself?"

"A. I brought it out there in my own car and in several instances on the bus, too."

"Q. Did you ever get a case consisting of three or four bottles of ordinary gin, a couple of bottles of sloe gin, and a couple of bottles whiskey?"

Q. Do you recall that question?

A. Something like that.

"A. No. The gin I brought out there was Gordon Dry—and the last time I brought it out there I brought it to the luau from the Pacific Brewing."

"Q. Did you ever pay for that liquor?"

"A. I have a bill for it. I haven't worked for five months. I just started working for the Legislature during the last three weeks."

Q. You have been questioned by the prosecuting attorney about having made some purchases or not

(Testimony of Robert K. Mookini.)

with Mrs. Miles for this luau dinner, as I understand it?

A. Yes.

Q. Will you state to the jury just what happened in connection with any purchases that you may have made or anything you may have done with Mrs. Miles in that respect?

A. Captain Miles sent me in to see Mrs. Miles because, he told me then, Mrs. Miles was handling the purchases of the Hawaiian pudding and Hawaiian foodstuffs, and for me to go down and see what progress she had made. At that time she was at the Capitol Building here, in the Delegate's office; so I went there and I asked her—I informed her [800] what the Captain sent me in to ask her about. Well, she said she had made some arrangements, and she asked me if my car was there, the station wagon, and I said no, the car had gone out, I had loaned it to somebody, I don't know who it was; then she informed me, "My car is out there"; so I says, "Will you drive me to the market?" "Which market you going to?" "Down to King Market." So I got in the car, I remember, about 11 or 12 o'clock, drove on down to King Market, and parked outside, and she got out of the car and went in; in 15 minutes she came back, and I drove her back. That was the last time.

Q. Did you go in with her to make the purchases?

A. No, I didn't.

(Testimony of Robert K. Mookini.)

Q. You stayed in the car?

A. Yes.

Q. Do you know what she bought in there?

A. No, I didn't; she was supposed, as I understood, to handle the Hawaiian foodstuffs, that's all I know.

Q. Was there a talk about where you could buy a Hawaiian pudding, or any talk about a Hawaiian pudding, or do you recall it?

A. Mr. Miles told me that Mrs. Miles knew; that there was a friend they had that they could get the stuff from; and, for that matter, the pudding didn't arrive out there, and was forgotten and never picked up.

Q. She knew where she wanted to go for the pudding, or did you take her where she wanted to go?

A. She told me to drive her to the King Market, that's on Kekaulike and King Streets, Waikiki corner.

Q. In answer to another line of cross-examination by [801] counsel, you stated that your trouble at the time that you were discharged from the Reserve Corps had to do with helping keep out of trouble a man with a wife and little child. I'm not going to ask you about that any more than to ask you what office that man held and who was it?

A. He was a lieutenant in the Navy—Lieutenant Rigby.

Mr. ULRICH: I think that's all.

(Testimony of Robert K. Mookini.)

Cross-Examination

By WILLSON C. MOORE, Esq.

Q. Mr. Mookini, you say that in the Grand Jury room I never asked you anything about a box of liquor?

A. No, I said you asked me something to that effect there, but not about a case; you asked me about 3 bottles gin, and you didn't tell me that there was——

Q. What did you understand when I asked you this question: "Was there a case of liquor ever delivered to you, to your quarters?"

A. You asked me was a case of liquor—but here you didn't say "case"; you said "3 bottles whiskey and 3 bottles of gin."

Q. Wasn't that in a case?

A. At that time you told me "case" it may have been a case of 24 bottles, maybe 6 bottles, maybe 12.

Q. And I suppose if you had understood you'd have said "Of course I got that."?

A. No, I didn't get it.

Mr. ULRICH: I object to the question, if Your Honor please. He was asking him if the thing was ever delivered to him, and his answer was that he brought it out there himself. [802]

Mr. MOORE: May it please the Court, I am going to ask the Court's indulgence for one question that I overlooked to ask on the cross-examination originally.

(Testimony of Robert K. Mookini.)

Q. Mr. Mookini, do you recall after the first of September last year, after this investigation had started, that you and Dr. Enright were having a meal at Kemoo Farm and this investigation of the Camp was being discussed, and you said, in effect, "I am going to get those 'sons of bitches' at the Camp, and Cunningham is one of them." Did you make such a statement out there?

A. I don't recall making that statement. If Dr. Enright said that, he must be lying, because he's been hanging around with Miles and Cunningham and Colman and Gibson.

Q. Did you make that statement, or didn't you?

A. No!

Q. Now, Mr. Mookini, didn't you ever get a letter from the United States Department of the Interior, office of the secretary, Washington, D. C., telling you that you were discharged and your services terminated?

A. I don't recall; I have had several letters written by my counsel.

Mr. ULRICH: We have all the letters here; I thought I put them all in, but evidently I didn't. (Mr. Ulrich hands document to Mr. Moore).

Mr. MOORE: I show you a copy of that letter; read that.

A. (after examining document): I don't remember whether I did get a letter; I remember talking to Mr. Lloyd one time about it.

Q. About this letter, didn't you?

A. About something like that, to that effect. [803]

(Testimony of Robert K. Mookini.)

Q. Have you got the original of this?

A. I don't think so.

Mr. MOORE: We'll offer the copy, may it please the Court, it being the best evidence available at this time.

The COURT: Is there any objection?

Mr. ULRICH: If the witness—there seems to be some question as to whether the witness got that, or his counsel. We're perfectly willing it should go in, on the Government's indication that it was sent, and if we find it we'll produce the original. I don't want to keep anything from the jury; just for what it's worth I am willing to have it go in.

The COURT: It will be admitted.

(Marked—"United States Exhibit N")

Crim. #8518

U. S. EXHIBIT "N."
Admitted

United States Department of the Interior, Office of the Secretary, Washington.

January 9, 1935.

Mr. Robert K. Mookini
National Park Service.

Sir:

Your services as Recreation Officer at $200 per month, Territory of Hawaii, have been terminated, with prejudice, for the good of the service, by the

(Testimony of Robert K. Mookini.)

Secretary of the Interior, upon recommendation of the Director of the National Park Service, effective at the close of October 17, 1934.

Respectfully,

(Sgd) GUY W. NUMBERS

Acting Chief, Division of Appointments, Mail and Files.

Through the Director, National Park Service, Order No. 454-ECW.

A True Copy

(s) HERBERT BALDWIN

Capt. F. D.

Incl. #3

Mr. MOORE: You said, I believe, that Deville had you suspended. Who wrote you the letter suspending you?

A. Did I say Deville had me suspended?

Q. Yes, Deville; that's what I understood you to say.

A. Mr. Moore, I don't think you correctly remember the statement. I was informed later on that it was through Captain Baldwin that I was suspended.

Q. Oh, it was through Captain Baldwin?

A. Why, this Deville run to me and apologized, "I didn't have you suspended; it was somebody else"; why did he come to me to clear himself first?

Q. Then I was incorrect when I was under the impression that you said Deville had you suspended?

A. Yes.

(Testimony of Robert K. Mookini.)

Q. It's Captain Baldwin?

A. Well, I was informed of it three months ago, that Captain Baldwin was the one, and it's borne out in this letter, too; [804] he's the "local disbursing officer."

Q. You went out and tried to collect your pay, didn't you?

A. Well, why shouldn't I?

Mr. MOORE: That's all.

Mr. ULRICH: Captain Baldwin is this "disbursing officer," is he not, mentioned in the letter, requesting your dismissal or suspension?

A. Yes.

Mr. MOORE: I'd like to read this to the jury. Gentlemen, before we pass over this thing just admitted in evidence as United States Exhibit "N":

(Mr. Moore reads Exhibit "N" to the jury)

Re-direct Examination.

By BARRY S. ULRICH, Esq.

Q. Calling your attention to Defendants' Exhibit 5, reading it in part:

> "The records of this office show that Mr. Mookini was suspended from his position as a recreational officer at the Wahiawa camp by the Governor of Hawaii on October 17, at the request of the local disbursing officer."

Q. Who was that "local disbursing officer"?

A. Captain Herbert Baldwin.

Q. That's the man you just spoke of?

A. Yes.

(Testimony of Robert K. Mookini.)

Q. What connection did he have with Deville?

A. Well, Deville is working out of his office—you don't have to laugh, Mr. Moore.

Q. Was Deville working in the office?

A. Deville was in conference up there with Captain Baldwin [805] and Miles and Cunningham, and Captain Baldwin, as I was informed by Mr. Lloyd, had requested my discharge at first, and Mr. Lloyd asked him for what reason, what were the charges; he said he wanted to have me removed; then after a while the suspension come through; he says if I was not discharged he would not disburse any more money to C. C. C. camps on Hawaii.

Q. That's this disbursing officer?

A. Yes.

Mr. ULRICH: That's all.

(Recess—9:59 to 10:05 a. m.)

Mr. ULRICH: Just one question, Mr. Mookini:

Q. There has been some evidence about you having you having told someone or said to someone that there were oysters, as I recall it, on the bill of fare out there at the Mothers' Day dinner. As a matter of fact, were there oysters eaten out there that day on the dinner?

A. On the menu we had oyster stew.

Q. It was oyster stew?

A. Yes.

Q. Do you know where they came from, whether they were held over from other orders?

(Testimony of Robert K. Mookini.)

A. Because Cunningham fixed the menu, approved by Miles, and on that menu it had oyster stew.

Q. You just happened to remember they were there?

A. And then when I came in, Mr. Lloyd asked me, in September, and I said I remembered having oyster stew. When I went out there the menu had disappeared from the month of May to June, everything was gone.

Q. But, to the best of your recollection, there were oysters on that menu?

A. Yes. [806]

Q. There were also flowers?

A. Yes, I remember flowers, too.

Mr. ULRICH: That's all.

Re-cross Examination.

By WILLSON C. MOORE, Esq.

Q. Who kept these menus?

A. The menus was on the file, right alongside of Captain Miles' desk.

Q. And you as Mess Officer had charge of them, did you?

A. No, I didn't have direct charge of it; it was open records standing on your board files.

Q. Right in the office?

A. Right in the office, and everybody walking in and out.

Q. Were you present when they had this oyster stew, or were you out?

(Testimony of Robert K. Mookini.)

A. What's that?

Q. Were you at the meal when they had this oyster stew?

A. You mean, Mothers' Day?

Q. I don't know when it was you said they had oyster stew.

A. I said, Mothers' Day.

Q. You had oyster stew?

A. Yes. I didn't eat that day, because I was too busy.

Q. Oh, you didn't eat?

A. I was there superintending the Mess.

Q. Do you know whether they had oyster stew?

A. I remember that correctly.

Q. You remember that distinctly?

A. Yes.

Mr. MOORE: That's all.

Mr. ULRICH: Defendants rest. [807]

LILY SHELTON

was duly called and sworn as a witness for the Plaintiff, in rebuttal, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name?

A. Lily Shelton.

Q. Where are you employed?

(Testimony of Lily Shelton.)

A. In the office of the United States Attorney for this District.

Q. In what capacity?

A. Stenographer.

Q. How long have you been a stenographer?

A. For something over nine years.

Q. And you have been completely engaged in the practice of your profession for that period of time?

A. I have.

Q. Were you employed in the United States Attorney's office for this District on the 19th day of March, of this year, in the capacity of stenographer?

A. I was.

Q. On that day did you have occasion to attend the meeting of the Federal Grand Jury?

A. I did.

Q. Do you know Mr. Robert Mookini here?

A. By sight.

Q. Was he present at that meeting of the Grand Jury?

A. He was.

Q. And in what capacity was he there, if you know?

A. As a witness.

Q. Did he give testimony?

A. He did. [808]

Q. Did you do anything with reference to that testimony?

(Testimony of Lily Shelton.)

A. I transcribed the notes which I took at that hearing.

Q. Did you take stenographic notes?

A. I did.

Q. Of his testimony?

A. I did.

Q. All of it?

A. All of it.

Q. Miss Shelton, I show you a document here; do you know what that is?

A. It's the transcription of the notes I took at that time.

Q. Is that the transcription, or not?

A. It is a copy.

Q. Of the original transcript?

A. Carbon copy.

Q. Of your notes?

A. Yes.

The COURT: It is a carbon copy?

A. A carbon copy.

Mr. MOORE: Made at the same time you made the original?

A. Yes.

Q. And this document here (indicating), what is that?

A. That is the original of my transcription.

Q. Of your notes of the testimony of Robert Mookini before the Grand Jury?

A. Yes sir.

Mr. MOORE: Will you mark this original for identification, then I'll hand it back to Mr. Ulrich.

(Testimony of Lily Shelton.)

(Marked "United States Exhibit No. 7 for Identification.")

(Mr. Moore returns document to Mr. Ulrich.)

Q. Have you your original notes?

A. I have.

Q. Miss Shelton, I'll ask you to read from your original [809] notes from the beginning, and I'll interrupt you, possibly, from time to time to have you skip things that have no bearing here; will you kindly proceed.

A. (reading):

"Your name is Robert K. Mookini?"

"Yes."

"And you understand at this time that the Grand Jury is making an investigation with reference to certain things which have taken place out at the C. C. C. while you were an officer out there?"

"Yes sir."

"And you understand that by virtue of your being called before the Grand Jury you do not have to testify?"

"Yes sir."

"And before coming into this Grand Jury room you signed this waiver?"

"I did this morning."

"And that is your signature?"

"It is."

Mr. MOORE: Just a moment. At that time was a document handed to you here to mark, if you recall?

(Testimony of Lily Shelton.)

A. It was exhibited to him; I don't know that it was actually handed to him.

Q. Very well.

A. (continuing reading):

"And you also realize that there is a possibility that as a result of this investigation this Grand Jury may return a true bill of indictment against you?"

"I do."

"When were you first employed at the C. C. C. Camp at Schofield Barracks?" [810]

"January 29, 1934."

Mr. MOORE: Continue.

A. (continuing reading):

"And at the time who was in charge of the Camp?"

"Major Mahaffy."

"What office, if any, did you hold?"

"Recreational Officer."

"Did you ever become Mess Officer of that Camp?"

"I was asked to help by Miles and Mahaffy because the Mess was running behind."

"Did you take over the duties at that time?"

"I assisted Mr. Gibson and I was doing mess work."

"I understand Mr. Gibson was quartermaster?"

"Quartermaster, yes."

"But I understand, Mr. Mookini, later on Mr. Gibson's duties were more or less confined

(Testimony of Lily Shelton.)

just to the regular quartermaster, and that you actually took over the duties of Mess Officer?"

"Yes, I did."

"When you first took over your duties as Mess Officer where were you purchasing vegetables, fruits, etc.?"

"At first my duties as Quartermaster were split up whereby I was handling the open market purchases; that would take in vegetables and outside purchases. Mr. Gibson was handling all subsistence bought from the quartermaster at Schofield—canned goods and whatever the bakery had to sell."

"When you first started in, where were you purchasing vegetables?"

"Chun Hoon." [811]

"And Chun Hoon has a stall in the Army market out there at Schofield Barracks?"

"Yes, he has.

"How long did you continue buying there?"

"Right up to April 15th."

"And after that where did you purchase?"

"Vegetables bought from Lee Chong Company through commissions of Miles and Cunningham."

"What reason was given?"

"Goods from Chun Hoon was seconds and the goods were not up to quality for the amount paid."

"How were they with reference to price?"

(Testimony of Lily Shelton.)

"Sometimes even, sometimes higher; most instances higher; Chun Hoon's prices were higher."

"And you kept a fairly good check on those prices, Mr. Mookini?"

"Yes."

"And you would say that, over the period of time when you were buying from Lee Chong, as compared to the prices paid to Lee Chong they were less than those paid to Chun Hoon?"

"Yes."

"Now, you recall that out there at the Conservation Camp during the month of May that you had a special dinner or something of an affair for Mothers' Day?"

"Yes."

"And on that particular day, I believe it was May 12th, a voucher was sent out by Lee Chong for various goods delivered;—first, I'll show you a photostat copy of a purported voucher from the [812] Lee Chong Company, dated May 12th, for the C. C. C. Camp at Schofield Barracks; I call your attention to the initials down at the bottom on the line where it says 'Received the above articles.'"

"Cunningham's."

"What is the purpose for initialing that?"

"That he has actually received the goods."

"The goods listed on this voucher?"

"Yes."

"Under the same date I show you another voucher, which is somewhat similar to the one

(Testimony of Lily Shelton.)

which I just have shown you, only there are some discrepancies. Whose signature is this?"

"Mine."

"And how did you happen to receipt for those?"

"Three days after the goods were delivered. This was the original. I was not there when the goods arrived. This line here represents that the goods had to be changed over into vegetables, because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing he had been to make the change, I came in to have it done. This bill was given to me, and Cunningham said that the Captain wanted to have it changed, and so I compared the amounts and signed the second one as a matter of record for the files out there."

"Did you have anything to do with the changing of these?" [813]

"No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess funds."

"Nevertheless"——

Mr. MOORE: Just a moment. Mr. Ulrich, do you doubt the veracity of any of these notes? I don't want to read them all, to take up time. I haven't found a mistake yet; have you?

(Testimony of Lily Shelton.)

Mr. ULRICH: Well, I don't doubt that she is going to read substantially what there is here. I don't know how proficient she may be; every stenographer I have found makes mistakes in transcribing. I don't know that this is exactly——

Mr. MOORE: Very well; read on.

Mr. ULRICH: Let me suggest that you designate question and answer. They sometimes run together in your reading, and it might be difficult to tell whether it's a question or an answer.

(Witness continues reading, but without complying with the foregoing request or suggestion)

"Nevertheless you signed this bill as receiving these particular things?"

"Yes."

"And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?"

"I can't say that they were not true and correct. The amount seemed to be the same. I didn't check it thoroughly."

"You just told us that there were a lot of things—paper cups and plates—on this other voucher which [814] could not be charged to Mess funds and you informed Mr. Miles of this, and because of that this thing was changed?"

"Yes. Mr. Cunningham informed me that the Captain sent him down to have it changed."

"And when you knew the voucher came out you knew that it had been changed?"

"Yes."

(Testimony of Lily Shelton.)

"You knew that the items had been changed?"

"Yes."

"And you knew there were items put on there which were not actually delivered so as to cover up the amounts of the paper plates, etc.?"

"I knew the paper plates were; the others were changed to vegetables to put the voucher through."

"You knew that these particular items in toto were not true and correct?"

"Not according to the original bill."

"You knew in fact they were not correct, didn't you?"

"Yes."

"Now, do you know anything about these? Here is a voucher I show you, under date of September 1, 1934; these initials down here"——

Mr. ULRICH: Just a moment. Is it your intention, Mr. Moore, to offer the entire record?

Mr. MOORE: No. I tell you, Mr. Ulrich—I'll show you—(Mr. Moore indicates on transcript to Mr. Ulrich, and opposing counsel have brief conversation).

Mr. MOORE: I understand that counsel does not object to [815] the introducing of the transcript of the testimony of Mr. Mookini for the reason that it has not all been read in open Court from the stenographer's original notes, and that the only

(Testimony of Lily Shelton.)

thing he wants to reserve is the right to cross-examine on some of the writing.

Mr. ULRICH: Well, this is my objection to this, if Your Honor please; it is my contention that if this is received it should be received as a whole:

Mr. MOORE: I can't offer it any other way.

Mr. ULRICH: Subject, as I have suggested, to my right of cross-examination. I do contend, however, and furthermore—I have no objection to the offer being made without having the balance of it read by the stenographer—I still retain, for what it may be worth, my objection to the reception at all of the testimony received before the Grand Jury, on the grounds heretofore stated that I believe it would be no evidence of a confession and not admissible for any other purpose.

Mr. MOORE: Then at this time, may it please the Court, I'll offer the original transcript of the notes of Mr. Mookini's testimony before the Grand Jury, in evidence. I offer the entire document because, as I understand the rule of evidence, no document can be offered unless it is offered in its entirety. The purpose of this offer is twofold; first, that it contains recordations of prior inconsistent statements, that is, that statements in it are absolutely inconsistent and contrary to the testimony given by Mr. Robert Mookini on the witness stand during the trial of this case; and, second, that particularly the first portion of it is in rebuttal of the statements [816] by the witness Mookini on the stand

(Testimony of Lily Shelton.)

that the conduct of the proceedings before the Grand Jury were unfair as to this witness.

Mr. ULRICH: Counsel never mentioned the latter phase at all. I submit it has no rebuttal value at all; it's a list of certain questions and answers. However, I'll submit the objection.

The COURT: The Court would suggest at this time, Mr. Ulrich, that you make your objection in full so that the Court can properly rule on it.

Mr. ULRICH: Yes. I object, if Your Honor please, not to the form of the offer, but rather, as heretofore indicated, to the substance of the offer, on the ground that he cannot properly contradict the witness by evidence theretofore taken and from that witness in a prior proceeding except as to the extent that testimony indicates prior contradictory statements; that it cannot be received as an admission against interest, this not being a civil trial; and that it is not tantamount to a confession and may not therefore be used for that reason; in other words, on the ground that it is not admissible in substance; but I do not urge the objection as to form.

The COURT: The statute that has made it permissible to have this witness present in the Grand Jury to take his testimony was passed by Congress less than two years ago. Prior to that it could not have been done, with the sanction of Congress, at least. However, there are a number of Federal decisions holding that the testimony of a witness be-

(Testimony of Lily Shelton.)

fore the Grand Jury, where the witness is afterwards placed on trial for an offense involving that [817] testimony, may be used for impeaching purposes; and it certainly would be clearly admissible, as Mr. Ulrich himself intimates, by way of confession or admission, if that is involved. The Court overrules the objection. The exhibit will be admitted and properly marked.

Mr. ULRICH: We note an exception, if Your Honor please.

The COURT: Exception is allowed.

(Marked—"United States Exhibit O")

Crim. #8518 U. S. Exhibit #7, marked for ident.

U. S. EXHIBIT "O"
admitted

STATEMENT OF ROBERT K. MOOKINI BEFORE THE FEDERAL GRAND JURY ON TUESDAY MORNING, MARCH 19TH, 1935.

Questions by Willson C. Moore, Assistant United States Attorney. Stenographer, Lily Shelton.

Q. Your name is Robert K. Mookini?

A. Yes, sir.

Q. And you understand at this time that the grand jury is making an investigation with reference to certain things which have taken place out at the CCC while you were an officer out there?

A. Yes, sir.

(Testimony of Lily Shelton.)

Q. And you understand that by virtue of your being called before the Grand Jury you don't have to testify?

A. Yes, sir.

Q. And before coming into this Grand Jury room you signed this waiver?

A. I did this morning.

Q. And that is your signature?

A. It is.

Q. And you also realize that there is a possibility that as a result of this investigation this Grand Jury may return a true bill of Indictment against you?

A. I do.

Q. When were you first employed at the CCC Camp at Schofield Barracks?

A. January 29, 1934.

Q. And at the time who was in charge of the Camp?

A. Major Mahaffey.

Q. What office, if any, did you hold?

A. Recreational Officer.

Q. Did you ever become Mess Officer of that Camp?

A. I was asked to help by Miles and Mahaffey because the mess was running behind.

Q. Did you take over the duties at that time?

A. I assisted Mr. Gibson and I was doing mess work.

Q. I understand Mr. Gibson was quartermaster?

A. Quartermaster, yes.

(Testimony of Lily Shelton.)

Q. But I understand, Mr. Mookini, later on Mr. Gibson's duties were more or less confined just to the regular quartermaster and that you actually took over the duties of Mess Officer?

A. Yes. I did. [111]

Q. When you first took over your duties as Mess Officer where were you purchasing vegetables, fruits, etc.?

A. At first my duties as Quartermaster were split up whereby I was handling the open market purchases. That would take in vegetables and outside purchases. Mr. Gibson was handling all subsistence bought from the Quartermaster at Schofield canned goods and whatever the bakery had to sell.

Q. When you first started in where were you purchasing vegetables?

A. Chun Hoon.

Q. And Chun Hoon has a stall in the Army market there at Schofield Barracks?

A. Yes, he has.

Q. How long did you continue buying there?

A. Right up to April 15th.

Q. And after that where did you purchase?

A. Vegetables bought from Lee Chong Company through commissions of Miles and Cunningham.

Q. What reason was given?

A. Goods from Chun Hoon was seconds and the goods were not up to quality for the amount paid.

Q. How were they with reference to price?

(Testimony of Lily Shelton.)

A. Sometimes even, sometimes higher, most instances higher. Chun Hoon's prices were higher.

Q. And you kept a fairly good check on those prices, Mr. Mookini?

A. Yes.

Q. And you would say that over the period of time when you were buying from Lee Chong, as compared to the prices paid to Lee Chong they were less than those paid to Chun Hoon?

A. Yes.

Q. Now, you recall that out there at the Conservation Camp during the month of May that you had a special dinner or something of an affair for Mother's Day?

A. Yes.

Q. And on that particular day, I believe it was May 12th, a voucher was sent out by Lee Chong for various goods delivered. First I will show you a photostat copy of a purported voucher from the Lee Chong Company dated May 12th for the CCC Camp at Schofield Barracks. I call your attention to the initials down at the bottom of the line where it says "Receievd the above articles"?

A. Cunningham's.

Q. What is the purpose for initialing that?

A. That he has actually received the goods?

Q. The goods listed on this voucher?

A. Yes. [112]

Q. Under the same date I show you another voucher which is somewhat similar to the one which

(Testimony of Lily Shelton.)

I just have shown you, only there are some discrepancies. Whose signature is this?

A. Mine.

Q. And how did you hapen to receipt for those?

A. Three days after the goods were delivered. This was the original. I wasn't there when the goods arrived. This line here represents that the goods had to be changed over into vegetables because Captain Miles was aware of the fact that you cannot buy paper plates or anything outside of food out of the Mess Fund. Mr. Cunningham had instructions to take this to town and have it changed. Not knowing he had been to make the change I came in to have it done. This bill was given to me and Cunningham said that the Captain wanted to have it changed, so I compared the amounts and signed the second one as a matter or record for the files out there.

Q. Did you have anything to do with the changing of these?

A. No. I had already notified Miles he couldn't buy paper plates and flowers out of Mess Funds.

Q. Nevertheless you signed this bill as receiving these particular things?

A. Yes.

Q. And you knew when you signed this document bearing your signature that the articles listed upon it were not true and correct?

A. I can't say that they were not true and correct. The amount seemed to be the same. I didn't check it thoroughly.

(Testimony of Lily Shelton.)

Q. You just told us that there were a lot of things, paper cups and plates, on this other voucher which could not be charged to the Mess Funds and you informed Mr. Miles of this, and because of that this thing was changed?

A. Yes. Mr. Cunningham informed me that the Captain sent him down to have it changed.

Q. And when you knew the voucher came out you knew that it had been changed?

A. Yes.

Q. You knew that the items had been changed?

A. Yes.

Q. And you knew there were items put on there which were not actually delivered so as to cover up the amounts of the paper plates, etc.?

A. I knew the paper plates were; the others were changed to vegetables to put the voucher through.

Q. You knew that these particular items in toto were not true and correct?

A. Not according to the original bill. [113]

Q. You knew in fact they were not correct, didn't you?

A. Yes.

Q. Now, do you know anything about these? Here's a voucher I show you under date of September 1, 1934. These initials down here in the line where it says "Received the above articles", those were Cunningham's initials?

A. Yes.

Q. And here's another one dated the same thing?

A. Yes.

(Testimony of Lily Shelton.)

Q. And you will notice that upon this—that is, the one which is receipted for by Cunningham and the one that was presented for actual payment—do not conform. Calling to your attention the particular things: You see there is 50 pounds of California yams and over here it is 25. And down here there are honey dew melons, pumpkin, dried mushrooms, etc. Those don't appear on here. Do you know anything about these?

A. There is another bill on these. It runs to about $72.50, I think.

Q. That is this bill here?

A. Yes, $72.50, correct.

Q. In other words, in this bill here that is presented, which is $526.60, there's concealed in amongst those items this for kiawe wood, chicken wire, Hawaiian pudding, chairs, etc?

A. Yes.

Q. Did you know that that was put in there to cover up?

A. I instructed him to make two bills. On May 16th Mr. Lloyd came down and took us over the coals for buying stuff which was like oysters and that stuff so I, before this luau came up—the Camp was supposed to expire about September 6th—about the middle of August Miles thought it would be a good idea to put on a luau for the boys out there because in the Mess Fund at that time there was money saved from the rations, so he told me to go down and price materials which would be

(Testimony of Lily Shelton.)

used for the luau out there. So in the meantime we were having several meetings, Miles, Cunningham and myself, around the office, some of the boys were there, and even then I appraised them of the fact that we couldn't buy anything out of subsistence funds that was not food. So he authorized me to go ahead. The first estimate submitted to Miles was about $800 which was ridiculous. In getting other figures it was reduced to six hundred and some odd dollars. He said to go ahead. So before September 1 I went down to make the arrangements, bought all the stuff, told them to send it out and to make two bills, one for subsistence and the other for extras which could be paid out of the Canteen Fund. So when he had the goods hauled out Cunningham went out with them. I was up town. Along about September 13 I happened to be called in to Mr. Lloyd's office, not knowing that an investigation was under way. So Mr. Lloyd called me in and asked me about it. I explained it. I told Mr. Lloyd to go out to the Camp and find vouchers for September 1 where the regulation had been violated. He went out there and grabbed this voucher and I showed it to him. He said it was with the full knowledge of the Camp Director which he was trying to blame me for. [114]

Q. Then these bills that I have shown you already and even others which have been presented out there about which we are not especially talking about now, any items which appeared on there which

(Testimony of Lily Shelton.)

were not actually delivered and which were put on there for the purpose of covering up purchases that could not be taken out of Mess Funds, anything done with those was with the knowledge of Mr. Miles?

A. Yes.

Q. And with his consent?

A. With that we went out and bought the stuff.

Q. Did he direct you to go out and buy it that way?

A. He told us to go out and buy it. He didn't say how to charge it.

Q. Did he ever give you any directions after charging it to cover up?

A. He said to. I told him to keep a detailed account.

Q. But you knew as a fact that vouchers actually went through for presentment and payment that were actually paid that had cover up items in them? I'll put it this way, then. You knew that there had been vouchers similar to the ones that you have seen here presented to the Camp Director for payment which were not true and correct in that they were, as we say in the common acceptation of things—"padded" to cover up things which were not legitimately Mess?

A. Those are the only two.

Q. Now, Mr. Mookini, as Mess Officer you used to come down town and call upon Lee Chong with reference to the goods which were to be purchased and delivered?

(Testimony of Lily Shelton.)

A. Not all the time. When I came to town I stopped there but the goods were already ordered by telephone. I would stop in and buy things for my own home too.

Q. You were buying things for your own home?

A. Yes.

Q. And how long had you been buying there?

A. Latter part of July and August of last year.

Q. Prior to that time did you ever buy your groceries and things of that sort from Lee Chong for your own personal use?

A. At that time I was buying because my wife was in the hospital.

Q. But before you never bought there before?

A. I bought there because I was broke and he offered me the credit.

Q. Did you pay for these things?

A. Yes.

Q. Do you owe him anything now?

A. About $50, since about last August, for goods I bought about that time. [115]

Q. Did you get any liquor to take out there?

A. I bought my own liquor.

Q. And Lee Chong never delivered any liquor out there for you?

A. No.

Q. There is an item on that voucher under date of May 12th, 1934, of 500 fresh oysters. Do you know whether or not those oysters were ever delivered?

(Testimony of Lily Shelton.)

A. It was for flowers, that's what I was informed of the change of that voucher.

Q. Our information, Mr. Mookini, is that those 500 oysters were for a case of liquor which came out there and was delivered into the kitchen, stayed there possibly a half hour or more, and then by one of the assistant cooks was taken to your quarters?

A. I don't think it is the truth.

Q. Was there a case of liquor ever delivered to your quarters?

A. I bought my own.

Q. Did you bring it out there yourself?

A. I brought it out there in my own car and in several instances on the bus too.

Q. Did you ever get a case consisting of three or four bottles of ordinary gin, a couple of bottles of sloe gin, and a couple of bottles whisky?

A. No. The gin I brought out there was Gordon Dry—and the last time I brought it out there I brought it to the luau from the Pacific Brewing.

Q. Did you ever pay for that liquor?

A. I have a bill for it. I haven't worked for five months. I just started working for the Legislature during the last three weeks.

Q. Now, this bill of May 12th—it was flowers delivered out there for Mother's Day?

A. Yes.

Q Were there any cigars or cigarettes?

A. Not at that time.

Q. Well, is there anything listed on that bill to cover cigarettes?

(Testimony of Lily Shelton.)

A. No; not at that time. I don't remember any such coming out there at that time.

Q. How much was this flower bill?

A. That I can't tell offhand, because it was close to Mother's Day flowers were pretty high at that time.

Q. Wasn't there a collection taken up out there at the Camp for the purpose of buying flowers for Mother's Day?

A. No.

Q. Was any collection ever taken for that?

A. There was a collection for a wreath for the boy who died June 26, 1934.

Q. And the purchase was made at Kilsby's?

A. Yes. [116]

Q. How much?

A. $19.

Q. Was it paid for?

A. Yes.

Q. Who paid it?

A. I did.

Q. How long after it was ordered?

A. A couple of months because they didn't get it paid to me. . . . A wreath for the officers; he said you incur the bill and we will pay you afterwards. I didn't get it. I'm still out $7.50 at Fujikami's.

Q. What about this watch?

A. I can explain that. Just before the Camp ended Cunningham came over and told me. He says, Bob, what do you think about giving Captain Miles

(Testimony of Lily Shelton.)

a gift? I said that was a good idea; what do you think we should give him? He said, Well, he might use a knife or a finger nail clipper, something fitting to show he had been at the Camp. I said all right. So we went out there and mentioned it to several of the staff out there and so we wanted to get a watch because Miles' watch wasn't working properly. So I started out to Davies to find a good watch at a nominal price. Couldn't find one. I couldn't get the discount I wanted.

Q. What were you going to do with the discount?

A. Was going to get the watch cheaper. Finally I went over to Marques, he had an Elgin there which was not so good. Then I went to Schwartz. In the meantime I couldn't get it from Schwartz outright without paying fifty or sixty dollars for it. So I told him about the watch over there and wanted to know how we could get it. He said we couldn't get any discount from Schwartz but if we could get someone to guarantee the payment he could give us a discount besides the 25% he could get out of Schwartz. Being there was a Hamilton watch, I got hold of Lee Chong. I told him we could buy stuff from Schwartz & Company through Benny but that they can give concerns a discount. I said if he would guarantee, that we would sign notes, those who had been chipping in, and pay him back on pay day, proportionately it would make our shares fourteen or fifteen. All told, I think the watch without the chain and the knife came to about $60 so the watch

(Testimony of Lily Shelton.)

was delivered. Benny wanted to be assured. I told him to call up Lee Chong. On the morning of the first I called for the watch and presented it to Miles knowing full well that it was a gift and that we in turn were going to pay for it. While Miles took the watch, much to my surprise he invited me to a luau in Kaimuki I didn't see the watch on him, until I was called in by Mr. Lloyd and asked to explain. I told him I was formerly employed with the Consolidated; I could buy things through the Consolidated and I paid them the net amount after the discount had been allowed through the Consolidated. For an automobile radio of $45 I got it for $21 through the Consolidated. That is, why I wanted to go through a concern and get the cheap price.

Q. Did you collect any money among the men for this watch?

A. Not yet; the watch has been turned back and therefore we don't have to pay for it. [117]

Mr. MOORE: Miss Shelton, you were present in the Grand Jury room, were you not, during the entire testimony of Mr. Mookini?

A. I was.

Q. And thereafter, when other witnesses were present?

A. Yes.

Q. Was there anything in any way said or done to curtail Mr. Mookini on whatever statements he wished to make before the Grand Jury?

Mr. ULRICH: Just a moment. I think I'll have to object to that as asking for the conclusion of this

(Testimony of Lily Shelton.)

witness. Let the witness say what was said or done, and let the jury draw its own conclusions as to whether he was curtailed in telling his story.

The COURT: The objection is sustained; it does call for the conclusion of the witness.

Mr. MOORE: Miss Shelton, was there anything said during that testimony that you took down, by myself, that is not recorded in this exhibit?

A. No sir.

Mr. MOORE: That's all. That is, referring to United States Exhibit "O". [818]

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Miss Shelton, I believe you said you have been with the United States Attorney's office for a good many years; how many years?

A. Not with the United States Attorney's office, Mr. Ulrich; I have only been there since last September; I have been with the firms of Huber, Kemp & Stainback, Kemp & Stainback, and Huber & Kemp.

Q. That's since you were in Mr. Stainback's office; in other words, before he came over to be United States Attorney?

A. Yes.

Q. You were his stenographer down in the office of Kemp & Stainback?

A. His, and Judge Kemp's, and Judge Huber's when he was there.

(Testimony of Lily Shelton.)

Q. Have you ever been a court reporter?

A. No sir; I have only taken court testimony once before; that was in the Circuit Court some four or five years ago, I believe, during the contest of the Matsumoto will.

Q. And was this the first time you had taken proceedings of a grand jury?

A. Yes sir.

Q. What system do you use?

A. Gregg.

Q. Do I understand, Miss Shelton, that there was nothing at all said except what was put down here while you were in there from the time they started to examine Mr. Mookini until they finished?

Mr. MOORE: That isn't the statement. [819]

Mr. ULRICH: Let me just find out what it was;——

Mr. MOORE: Well, to state something that was not said is improper. What was said with reference to that is, that there was nothing said by myself during the examination of Mr. Mookini that was not recorded. Now you're putting the whole grand jury in there, and there were 23 of them.

Mr. ULRICH: Well, I'll withdraw the question. I didn't say "by anyone."

Q. Do I understand, Miss Shelton—I am going to ask you the question whether you took down everything that was said by everybody?

A. I think I took down everything that was said by Mr. Moore and Mr. Mookini.

(Testimony of Lily Shelton.)

Q. You know, if you've taken testimony, that there are times when people will stop and carry on a conversation which is not recorded, and then go on again; nothing like that happened?

A. In such a case I think the stenographer is generally told that "This is off the record" and she does not take it.

Q. You don't recall anything like that?

A. No.

Q. Let me ask you to turn to that part of your notes—there's a certain place where you find a question and answer something like this; this is on page 2 of the transcription,——

Mr. MOORE: She read down through that, Mr. Ulrich.

Mr. ULRICH: I know she did; it's part of those you already read; it says, "And did you happen to receipt for those?" That's the question. The answer is rather a long answer; [820] it starts: "Three days after the goods were delivered. This was the original."——

Mr. MOORE: That was just before you stopped reading, Miss Shelton, if that would help you find it.

A. (reading): "And how did you happen to receipt for those?"

Mr. ULRICH: That's right.

A. (reading): "Three days after the goods were delivered. This was the original."——

Q. Let me just see what you have there. May I take this just for a second and show it to Mr.

(Testimony of Lily Shelton.)

McGhee, who knows more about stenography than I do.

A. Surely.

(Mr. Ulrich and Mr. McGhee examine notes.)

Q. We're down at the bottom of your page here: "Came to town to have it done"—do you see that place there, "Not knowing he had"——

A. (reading): "Not knowing he had been to make the change, I came in to have it done. This bill was given"——

Q. Just a moment. What is the character for "done"?

A. "Dn".

Mr. MOORE: Make it on the back of there (indicating).

Mr. ULRICH: What is the character for "it"?

A. (illustrating): "To have it done."

Q. Now, in taking these notes did you have occasion to go over them and review them, or anything like that, at any time?

A. I re-read them yesterday with my transcript to be sure it was a direct transcription. [821]

Q. And the notes otherwise are as you took them at the time?

A. With one exception, the transcription is direct from the notes.

Q. Except what?

A. In this last paragraph——

The COURT: What page are you referring to?

Mr. MOORE: Page 6.

Mr. ULRICH: What was the error?

(Testimony of Lily Shelton.)

A. "Who had been chipping in", instead of "who would be chipping in".

Mr. ULRICH: "Who had been chipping in", instead of "who would be chipping in"?

A. Yes.

Mr. MOORE: That's an error in transcribing?

A. Yes.

Mr. ULRICH: So that, if any error did come in, it would not be in the copying from your notes to the transcription?

A. No.

Mr. ULRICH: Of course we can't reproduce the oral words that were then spoken. I think that's all.

Re-direct Exemanation.

By WILLSON C. MOORE, Esq.

Q. Miss Shelton, as I recall, you went in the Grand Jury room and within two or three hours afterwards that transcription was finished and put on my desk, was it not?

A. It was.

Q. In other words, when you made the transcription it was immediately afterwards?

A. It was.

Mr. MOORE: That's all. [822]

CAPTAIN HERBERT BALDWIN

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Mr. MOORE: The witness has already been sworn, Mr. Clerk.

CLERK: He has, yes.

Mr. MOORE: Captain Baldwin, during the month of October, 1934, did you make a visit to Lee Chong Company's store with Mr. Deville?

A. I did, on the morning of October 16th.

Q. And whom did you see there, if anyone?

A. A man by the name of Roque, and Lee Chong's son.

Q. Did you have any conversation with this man Roque?

A. Yes, Captain Deville had——

Mr. ULRICH: Just a moment. I don't know exactly what this is; of course conversation with other people without the presence of the defendant is not admissible. If it's something as to which a basis has been laid in the testimony of Mr. Roque——

Mr. MOORE: I can assure counsel of that.

Mr. ULRICH: All right.

Mr. MOORE: Did Mr. Roque have anything to say as to what his connection was with that firm?

A. He said he was the assistant manager.

Q. Without going into details, just give us the subject of the conversation.

(Testimony of Captain Herbert Baldwin.)

A. The conversation concerned the padding of Mess bills pertaining to the C. C. C. Camp at Schofield Barracks. [823]

Mr. ULRICH: Now, if Your Honor please, the only thing we can do at this time, at this late stage of the proceedings, is to prove some prior contradictory statements, as I understand,——

Mr. MOORE: That's exactly what we're going to do.

Mr. ULRICH: (continuing): in the matter of impeaching a witness. Asking the witness generally to relate a conversation and opening up another field on which I may have to cross-examine, I believe is improper. "Did you or did you not say something", or "Did Mr. Roque say something" which has already been called to Mr. Roque's attention, and then get the prior contradictory statement from that witness, not the rest of the conversation.

Mr. MOORE: We're going to do just exactly what Mr. Ulrich says, we're going to show prior inconsistent statements.

Mr. ULRICH: Well, I object to the form of the question. He says "What was said, state so and so"; he has Mr. Roque's testimony.

Mr. MOORE: I'll withdraw the question.

Mr. ULRICH: All right.

Mr. MOORE: Showing you United States Exhibit "D"; have you ever seen that before?

A. Yes sir, I have.

(Testimony of Captain Herbert Baldwin.)

Q. Where did you first see it?

A. In the office of Lee Chong and Company. It was presented to Captain Deville and myself by Mr. Roque.

Q. On what day?

A. On October 16, 1934.

Q. On this particular bill were there any things called off as being padded, or things not delivered to the Civilian Conservation Camp? [824]

A. There was 500 only fresh oysters——

Q. Wait a minute; let me have that (exhibit). Have you any individual recollection of what was called off?

A. I have, because I made a note at that time.

Q. When these were called off what did Mr. Deville do, if anything?

A. He wrote them down on a piece of paper, and in addition he marked that bill there.

Q. What items did Mr. Roque call off at that time as being items that were not delivered to the Civilian Conservation Camp that were listed upon this voucher?

A. 500 oysters, 400 pounds of spinach, 400 pounds pumpkin, 400 pounds of squash, and 40 pounds of fresh lima beans.

Q. Anything else you recall?

A. And I believe there was the question of apples; the item of apples was raised from 2 cases to 6 cases.

(Testimony of Captain Herbert Baldwin.)

Q. Now, were there any other vouchers there at that time with reference to this same date that were different?

A. There were quite a number of various vouchers there which Mr. Roque showed Captain Deville and myself, and I believe there was another voucher of the same date which had some items on it that had been scratched out or attempted to scratch out, which was purposted to be one of the bills that were submitted as of that date.

Q. I show you United States Exhibit "B", and ask you if you have ever seen that before?

A. Yes sir; this was supposed to be the original voucher as submitted which was requested to be changed.

Q. Was there anything said by Mr. Roque as to who made the [825] request for the changing of United States Exhibit "B", this one voucher with the lines through it?

A. Mr. Mookini and Mr. Cunningham.

Q. Who said "Mr. Mookini and Mr. Cunningham"?

A. Mr. Roque.

Q. Was there anything said at that time about September 1st vouchers?

A. Yes sir, there was;——

Q. Wait a minute, don't tell me what was said. Have you seen that voucher before, showing you United States Exhibit "B"?

A. Yes sir.

(Testimony of Captain Herbert Baldwin.)

Q. Where did you first see that?

A. I saw that in Lee Chong's office; Mr. Roque had this out there.

Q. Was there anything said about this particular voucher?

A. Yes sir, there were a number of items which had been changed at the request of Mr. Mookini and Mr. Cunningham.

Q. Who said that it was the request of Mookini and of Cunningham?

A. Mr. Roque; he seemed very familiar with everything that took place in there.

Q. Was there any books there in which these various vouchers were listed?

A. Yes, there was; there was a small cloth bound book which Captain Deville had and in which was written in these various items which purposted to represent the various bills that had been submitted to the Camp Director at Schofield Barracks covering the items delivered there.

Q. Did you check any of them? [826]

A. Those bills were checked against that book——

Mr. ULRICH: Is this as to prior contradictory statements?

Mr. MOORE: Prior contradictory statements; Mr. Roque testified that there was a book kept.

Mr. ULRICH: He said nothing of the kind: he said he kept certain memoranda kept by the Chinese bookkeeper.

(Testimony of Captain Herbert Baldwin.)

Mr. MOORE: (argument).

Mr. ULRICH: (argument).

The COURT: The Court does not pretend to recall better than the record, but the Court's recollection is that this witness did testify that there was no account kept of the goods delivered to the C. C. C. Camp.

Mr. ULRICH: I'm afraid I'll have to call him again if there's that misunderstanding, Your Honor; because he kept his own memoranda—I thought he said no; in fact, some of them are in evidence in the record right now.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Baldwin, what was it that Mr. Roque read off to you, do you remember now what he said to you as to the things that were on that first bill that shouldn't have been on there?

A. 500 oysters, 400 pounds pumpkin, 400 pounds spinach, 400 pounds squash, and 40 pounds fresh lima beans.

Q. What have you been doing—memorizing this thing, Captain?

A. I am telling the truth.

Q. I say, it's rather extraordinary a thing that you should come in here all these months later and remember item for item what he read off to you.

[827]

A. I have a memorandum in my pocket that I made at that time.

(Testimony of Captain Herbert Baldwin.)

Q. And you have refreshed your recollection from that memorandum?

A. I have that memorandum here.

Q. I see. How did it happen that Mr. Roque specified Mr. Mookini and Mr. Cunningham as the ones who had directed those changes?

A. Because when Captain Deville went there and asked these questions he told Mr. Roque at that time that he did not have to answer these questions, and he asked him who it was that asked that this be changed, and he said "Mookini and Cunningham".

Q. He said "Mookini," you're very sure about that?

A. And "Cunningham."

Q. And you're quite sure that he took only the one paper when he read these things off, and didn't refer to another paper? Of course you know it would have been easy enough to take the items of the bill and check one against the other; but he performed the same feat you're performing now, that is, he took the paper without any figures and read them off?

A. No, no, he had a cloth bound book which had these items in it.

Q. And he checked it back and forth?

A. And that book was removed by Captain Deville and later given back to Lee Chong, and that book had these items in which are under dispute; and there was one bill already rendered which had

(Testimony of Captain Herbert Baldwin.)

all these items scratched out, paper napkins and things of that sort; and we asked him to [828] explain that, and he said that bill was taken back and changed to this present bill with oysters and so forth, at the request of Mookini and Cunningham.

Q. And, so far as reading these things off, he didn't really take it off one bill, he did it by consulting his records?

A. He did it by looking at his records, and pulled those bills out.

Mr. ULRICH: That's all.

Mr. MOORE: That's all, Captain.

(Recess—11:00 to 11:05 a. m.)

HARRY M. COLMAN

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Have you ever been down to Lee Chong's with Mookini?

A. Yes.

Q. On how many occasions?

A. I don't know exactly; half a dozen, at least.

Q. Ever have any drinks down there?

A. Yes.

Q. Who furnished the drinks?

(Testimony of Harry M. Colman.)

A. Well, several times I have come down there and found liquor on the table when I come down there, and at least two occasions when there wasn't any more liquor left Lee Chong went out and came back with a bottle.

Q. Lee Chong went out, and brought the bottle back himself?

A. Yes.

Q. Any of these fellows drinking there pay for it?

A. No; I never have. [829]

Q. Ever seen anybody else?

A. No.

Mr. MOORE: That's all.

Cross Examination

By BARRY S. ULRICH, Esq.

Q. When he went out to get this liquor and brought it back, what kind of liquor was it?

A. He brought back a bottle of Black Label once, I remember.

Q. You don't know where he got it from?

A. No, I don't know where he got it.

Mr. MOORE: "Black Label", that's Scotch, isn't it?

A. I believe so, yes.

Q. What?

A. I believe it's Scotch whiskey.

(Testimony of Harry M. Colman.)

Mr. ULRICH: Did you ever have any drinks with Mr. Mookini there?

A. Yes.

Q. Whose liquor was it?

A. I don't know whose liquor it was.

Q. You don't know where it came from?

A. No, I don't believe I do; I couldn't say that I saw it taken from any particular place.

Q. Well, would you want to say that it was not Mookini's own liquor; would you know that it wasn't his liquor?

A. I have never heard anybody say whose liquor it was; I simply saw it on the table. On these two occasions I saw Lee Chong go out, and come back with a bottle in his hand.

Q. And, so far as the liquor was concerned, was Mookini there on these two occasions?

A. Yes. [830]

Q. You don't recall being out anywhere with Mookini at any time and Mookini buying any liquor?

A. Certainly I did, I remember occasions when Mookini bought liquor.

Q. I thought you said you didn't know where it was from?

A. I thought you were speaking about Lee Chong Company.

Q. I am talking about Mookini getting liquor and taking it over there to drink.

(Testimony of Harry M. Colman.)

Mr. MOORE: May it please the Court, I object to that as not proper cross-examination, because there is no testimony on direct that Mookini got any liquor and took it over there; that's an absolute mistake in the evidence.

Mr. ULRICH: There was evidence, as I understand it, Your Honor, that Mookini was out with this fellow somewhere and that they got a bottle of gin or something of that sort and went over to Lee Chong's and Lee Chong furnished the ice water, or whatever it was.

Mr. MOORE: (argument).

Mr. ULRICH: (argument).

Mr. MOORE: As long as you make your questions clear, I have no objection to your asking him anything you want.

Mr. ULRICH: Is there anything difficult about this question:

Q. Were you out with Mookini at any time when he bought liquor?

A. I couldn't understand at that time whether you were speaking of the occasion at Lee Chong's or any occasion at all.

Q. I am just talking of any occasion when you and Mookini were together and he bought liquor and went over to Lee Chong's and drank it? [831]

A. I don't remember of any occasion.

Q. You don't remember anything of that kind at all?

A. No.

(Testimony of Harry M. Colman.)

Q. You don't know where that whiskey, or whatever it was, came from, that Lee Chong bought in there; do you know how far away he went to get it, or anything?

A. No, but he came back in a few minutes.

Q. Did you ever hear anybody tell him that they had liquor in a certain part of the store and to bring it over?

A. No, I don't believe so.

Q. You had heard somebody ask Lee Chong for liquor when he went out and bought his own liquor?

A. I don't remember hearing anyone to ask Lee Chong to buy any liquor; I remember him getting up voluntarily and going out and getting some.

Q. That is, when there was no liquor there, he went out and got some?

A. When there wasn't any liquor left.

Q. When it was gone, he went out and got some more?

A. Yes.

Q. Nobody said anything to him about it, or told him where to get it, or anything of the kind?

A. They may have, but I don't remember anything of that kind.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

HARRY L. KIM

was duly called and sworn as a witness for the Plaintiff, and testified as follows: [832]

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Harry L. Kim.

Q. Do you know Mr. Mookini?

A. Yes.

Q. Do you remember during the month of June that there was a funeral in here for one of the boys that was a member of the Civilian Conservation Camp?

A. I do.

Q. Were you in town on that day?

A. Yes.

Q. And whom were you with?

A. Mr. Mookini.

Q. Do you know Mr. Lee Chong?

A. Yes.

Q. Do you know where his store is?

A. Yes.

Q. Did you call at Mr. Lee Chong's store with Mr. Mookini on that day?

A. Yes.

Q. And what did he do there, if anything?

A. Well, we went down there, and Mr. Mookini went in; he had a talk with Lee Chong; I don't know what they talked about; but after that we all went in; there was two other fellows, besides

(Testimony of Harry L. Kim.)

myself, there was three of us, and we all went in the store, and after we went in the store there, we walked in and Mr. Mookini walked in the little office there with Mr. Lee Chong, and we all went in there, and then Mr. Lee Chong went out, and he came back with a quart of whiskey.

Q. When you say "he went out", what do you mean, where did he go out of?

A. He went out of his store.

Q. Did you see where he went out of the store?

[833]

A. No. The office is right in front of the store; he walked out, I don't know where he went.

Q. Was it on the street, did he go out as far as the street, or not?

A. No, I don't know.

Q. You're sure you saw him go out?

A. Yes.

Q. And he came back with a bottle of whiskey?

A. Yes.

Q. When the whiskey was brought back what did he do?

A. When the glasses were placed on the table and the drinks were served out, we all sat down and drank. There was some White Rock brought in, too, right after that.

Q. Two bottles of White Rock?

A. Yes.

Mr. MOORE: That's all.

(Testimony of Harry L. Kim.)

Cross Examination

By BARRY S. ULRICH, Esq.

Q. When Mr. Lee Chong went out, where did you say he went—down the street, or something, outside the store?

A. He just went; I don't know whether he went up or down.

Q. Just out of the office; there are stores around there, aren't there?

A. Yes.

Q. You don't know where he went, except he went outside of the office?

A. Yes.

Q. And came back with this whiskey?

A. Yes.

Q. You don't know what this whiskey was, or where he got it?

A. No.

The COURT: Just one question. Who did you say was with you and Mookini at that time? [834]

A. There were two other enrollees.

Q. When you speak of "enrollees", what do you mean—members of the C. C. C. Camp?

A. Yes.

Q. You were a member of the C. C. C. Camp at that time?

A. Yes.

The COURT: That's all.

FRANK D. GIBSON

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified as follows:

Direct Examination

By WILLSON C. MOORE, Esq.

Mr. MOORE: Mr. Gibson, you have been already sworn in this case?

A. Yes.

Q. Out at the Civilian Conservation Camp who had charge of policing the Camp?

A. Mr. Mookini and, later, myself.

Q. When did you take over the policing of the Camp, to the best of your recollection?

A. Shortly after he took over the Mess, I believe.

Q. What's that?

A. I believe, shortly after he took over the Mess.

Q. Shortly after Mr. Mookini took over the Mess, you took over the policing of the Camp?

A. Yes.

Q. Do you know Mr. Lee Chong?

A. Oh yes.

Q. Do you know where his store is down town?

A. I do.

Q. Ever been there with Mr. Mookini?

A. Yes. [835]

Q. Ever have any drinks there?

A. Yes.

Q. On how many occasions?

A. One occasion.

Q. When was that, to the best of your recollection?

(Testimony of Frank D. Gibson.)

A. Either the latter part of May or the first part of June; as to the date, I don't know.

Q. Just tell us what happened in the store, that is, with reference to the drinks themselves.

A. Mr. Mookini and I were in town one day on some business, and we picked up Mr. Hoopii, and we went to Lee Chong's, and talked a while; there was some discussion about a chop suey dinner that was to be given——

Q. Never mind the discussion; just confine ourselves to the drinks.

A. Something was mentioned about a drink, and then a bottle was produced.

Q. Who produced the bottle?

A. I believe, Lee Chong.

Q. That's this defendant here (indicating)?

A. I believe so.

Q. Do you know where he got it?

A. No sir.

Q. This man that you speak of—Hoopii—he is an employee of the E. C. W. over here at the Capitol, isn't he?

A. Yes sir.

Mr. MOORE: That's all.

Cross-Examination

By BARRY S. ULRICH, Esq.

Q. Do I understand that you now recall this thing so definitely that you know how that bottle was produced, [836] how it appeared at that par-

(Testimony of Frank D. Gibson.)

ticular moment; did you carry that picture in your mind, now did you, Mr. Gibson?

A. Yes, because it's the only time I was there.

Q. So that you remember quite distinctly what happened when the liquor appeared, do you?

A. I do.

Q. And what was his—how did Lee Chong behave himself when he produced that bottle of liquor?

A. I don't know how he appeared.

Q. What did he do; what makes you remember particularly Lee Chong producing this bottle of liquor; are you quite sure it didn't come from Mr. Mookini?

A. No sir, not that I know of.

Q. You're not sure, or are you; have you a very distinct recollection?

A. Yes, I have.

Q. And Mr. Mookini didn't have any liquor of his own at all?

A. Nothing, sir, because I was with him.

Q. Were you watching him carefully to see that he didn't pop a bottle on you there?

A. He couldn't pull a bottle on me without me knowing it.

Q. And he didn't, you're quite sure?

A. No sir.

Q. So it was Lee Chong that produced the liquor?

A. Yes sir.

Q. You don't know where he got it?

A. No, I don't; it was Filipino gin.

(Testimony of Frank D. Gibson.)

Q. Did he tell you that it was his liquor—Lee Chong?

A. No sir.

Mr. ULRICH: Then you drank, and everything was fine. That's all. [837]

Mr. MOORE: Now, may it please the Court, as Your Honor has seen I have had a number of witnesses here this morning, and I have a very short amount of rebuttal yet to put on, and it can be put on in a short while, but I of course can't foresee events and I'm not prepared at this time to put on the balance of them; I am confident, Your Honor, I have gone as far as I can and within an hour on Monday that the balance of the testimony will be in.

Mr. ULRICH: If Your Honor pleases, if there's any considerable part of the hour to be used I'd like that it be used now as far as possible, and then we can argue the case on Monday.

The COURT: Have you any witnesses within call that could be used at this time, Mr. Moore?

Mr. MOORE: I have Mr. Deville within call, Your Honor. There are two or three things in my mind at this time that I could question Mr. Deville about, but, I have not gone over the entire testimony to check it; in other words, it would be a piecemeal proposition, and I feel that bringing on testimony now would be more or less like groping, while if I had an opportunity to check these particular things they can be put on in just about one-third of the time, Your Honor; so that it's an attempt to ex-

pedite things that I say this, Your Honor; it isn't for the purpose of delaying or anything of that kind.

Mr. ULRICH: It's pretty much of a groping procedure, whatever he says, so far as that's concerned; but Mr. Deville is here, and I submit——

Mr. MOORE: May it please the Court, could we have the [838] statement of Mr. Ulrich, as to his facetious remark with reference to the "groping", stricken from the record and ask the jury to disregard it, and ask Mr. Ulrich that such remarks have no place in a Court of law.

Mr. ULRICH: I consent that it may be stricken. But, seriously, if Your Honor please, I think that Mr. Moore and Mr. Deville have been in constant contact here ever since the trial started, and if they haven't gotten the thing straightened out by this time I don't think they will be in any better shape by Monday morning. I want to finish the trial, and I think everybody else does, and if anything can be done——

The COURT: Yes; I had very much hoped we could take up the trial of another case by Monday, but that seems impossible. You're through with Mr. Gibson?

Mr. MOORE: Yes, Your Honor.

The COURT: You'll be excused, Mr. Gibson. Let us proceed as far as we can with Mr. Deville.

Mr. MOORE: Very well. Mr. Deville, will you take the stand.

CHARLES I. DEVILLE

being recalled as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Mr. Deville, you know this boy Hutchinson that testified here on the stand?

A. I do.

Q. Did you have a conference with him over at Kaneohe some time last year?

A. I did. [839]

Q. When was that, to the best of your recollection?

A. It was on a Friday afternoon, I believe, about October 18th.

Q. And did you talk to him?

A. I did.

Q. Did you question him about any box being on the truck of Lee Chong's when it made the May 12th delivery for the Civilian Conservation Camp?

A. I did.

Q. And what did he have to say in that regard?

A. He stated on this particular occasion that there was a box on the truck for Mr. Mookini.

Q. For Mr. Mookini?

A. Yes.

Q. Did you talk to him again the next morning?

A. I did; the following morning, Saturday, I took a sworn statement from him.

(Testimony of Charles I. Deville.)

Q. And what did he have to say, if anything, with reference to his prior statement at Kaneohe?

A. He stated at the time he made this morning statement that there was no box on the truck for Mr. Mookini, and he denied having made that statement to me the previous day that there was a box.

Q. And, Mr. Deville, you made notes of these conversations, did you?

A. I took it right on the typewriter; I asked him the questions and took his answers right on the typewriter.

Q. Did you particularly question him on the second occasion about this box?

A. I did.

Q. Now, Mr. Deville, I don't recall certain parts of your [840] direct examination. Taking you back to Lee Chong's store when you questioned Mr. Roque in the absence of Mr. Lee Chong; what did Mr. Roque have to say, if anything, as to who directed the changes in the original vouchers covering the September 1st and May 12th deliveries?

A. This conversation with Roque took place on the morning of October 16th, in the presence of Captain Baldwin and Lee Chong's son, and at that time Roque stated to me that the changes were made at the request of Mookini and Cunningham.

Q. And at that time, Mr. Deville, were the items called off to you as to which articles were not delivered?

A. They were.

(Testimony of Charles I. Deville.)

Q. And who called them off?

A. Roque.

Q. And when and as he called them off, what did you do, if anything?

A. I had the original of the changed May 12th invoice in front of me and put an arrow mark before each item as he called them off; he pointed them out to me.

Q. Showing you United States Exhibit "D", is this the voucher to which you refer?

A. It is.

Q. And these (indicating) are the arrow marks that appear on the side?

A. They are.

Q. How about this circle in here with the number "2" in it?

A. Where it says "6 cases red apples" I put a circle there with a "2" inside.

Q. And that was done as Roque called these off?

A. It was. He saw me do it. [841]

Q. Now, with reference to the September 1st voucher, did he call any items off of that?

A. Henry Lee entered into the conversation at this time, because Henry Lee was in the store on September 1st or prior to that; he wasn't there on May 12th, he was going to school; and Roque explained that items amounting to $76.20—I made a note of it at the time—had been delivered to the Camp and had been included in the September 1st voucher as other items, and that later, that a sepa-

(Testimony of Charles I. Deville.)

rate bill was made out for the items amounting to $72.50; he did not explain the discrepancy.

Q. Did he call off the items, or not?

A. Yes, he did, he pointed them out to me.

Q. And what did you do, if anything, as he pointed them out to you?

A. I made a mark on there; I can't say whether it's a line or an "X"; I marked the items.

Mr. ULRICH: Just to understand what's going on here; I don't understand that this is in denial of anything that Mr. Roque testified to; if it is, I'd like to have indicated what the difference is. Mr. Roque's testimony, as I understood it, was that he did not call it off of one sheet, that he had to consult his book or something of that kind to tell him what the changes had been; but I don't understand that he denied informing him of what the items had been.

Mr. MOORE: His direct denial, as I understand it, was that he did not call these items off to Mr. Deville in the presence of Captain Baldwin. That's my recollection of the testimony. [842]

Mr. ULRICH: Well, if that's what you have in mind, I think the question is simply whether Captain Baldwin was there or not, without re-examining him as to the whole conversation. Oh go ahead; it will be quicker.

Mr. MOORE: Will you answer that question?

A. What was the question?

Q. What mark did you make, if you know?

(Testimony of Charles I. Deville.)

A. I just made a mark on the original voucher.

Q. Mr. Deville, do you recall any conversation with Mr. Mookini wherein the question arose as to when he started his charge account?

A. I do.

Q. And where did that conversation take place?

A. It took place in the office of the Assistant United States Attorney.

Q. That's myself?

A. That's correct.

Q. When?

A. As well as I recall, it was the early part of November of 1934.

Q. And who was present?

A. Mr. McGhee, Mr. Mookini, yourself, and myself.

Q. And what was said with reference to the time this charge account was opened?

A. Mr. Mookini said at that time that he first started the charge account at the Lee Chong Company in July of last year, and that the reason he started it was because his wife was in the hospital and he was a little short of money.

Mr. MOORE: That's all, may it please the Court, of this witness at this time. [843]

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Deville, as I understand, this Hutchinson boy on the first occasion when you saw him told you

(Testimony of Charles I. Deville.)

quite definitely that there was a box on that load, is that right?

A. That's correct.

Q. Well, of course we know and he's already told us that there were many boxes on the load, but more than that he told you that this box was a box for Mookini?

A. That's correct.

Q. You didn't suggest that idea to him at all, I suppose, did you?

A. Well, the conversation with him was verbal and, as I recall it, I asked him whether or not there there was such a box, it's true.

Q. Then, after he thought it over and you came back next day, he said no, that there wasn't such a box?

A. That's correct, he denied making such a statement.

Q. And he said he hadn't said that before?

A. Yes, correct.

Q. And the sum and substance of your examination and re-examination of Mr. Hutchinson was that he denied that there was any box on the truck for Mookini, is that right?

A. That's the sum and substance of his statement with reference to the box.

Q. In other words, he got it the first time as you had suggested and got this box idea, and then he denied it as soon as you tried to get it into writing, is that correct? [844]

(Testimony of Charles I. Deville.)

A. That's correct; he came in town that night; I brought him in.

Q. Now, so far as Roque is concerned, what he did was to read off these figures to you, that's right, is it—I mean, these items that had been changed?

A. When I say that, he pointed them out to me.

Q. And Captain Baldwin was there at the time?

A. That's correct.

Q. And it was your impression that Roque had denied that Captain Baldwin was there?

A. No; it's my impression that Roque denied stating that the item of pumpkin was among the items that he said were not delivered, and, further, that he denied making the statement that Mookini and Cunningham had requested the changes.

Q. The other conversation was with Mr. Mookini in the United States Attorney's office, and there Mookini told you that this charge account was started in July?

A. Among other things.

Q. Was there any particular discussion of exactly the month that it was started, or how close to the time when his wife was in the hospital or came out of the hospital?

A. Yes, I asked him first about the charge account.

Q. Had you been through the book and discovered when his charge account had actually started?

(Testimony of Charles I. Deville.)

A. I saw it entered in Lee Chong's book, which said he started his charge account in September of last year.

Q. Did you call his attention to that fact, to the mistake about July, that the book showed only September, and ask him what the real situation was?

[845]

A. I don't think that was brought to his attention at that time; I didn't have the book in my possession.

Q. In other words, he didn't do any more than to give you his best recollection from memory without any reference to the charge account; he didn't deny it when he saw it, or anything like that, that he had charged only in September?

A. I didn't show it to him, I didn't have it.

Mr. ULRICH: That's all.

Mr. MOORE: That's all, Mr. Deville.

The COURT: Now, gentlemen of the jury, remember the admonition heretofore given you. While we're all anxious to conclude this case, it has not been the practice of this Court to hold sessions on Saturday, that is, jury cases, except in an emergency; and although we're anxious to conclude this case, at this time the jury will be excused until—how long do you think it will take Monday morning to conclude this evidence, Mr. Moore?

Mr. MOORE: We can conclude it within an hour, easy.

(Testimony of Charles I. Deville.)

(Discussion as to the hour for continuation of the trial on Monday morning)

The COURT: The Court is usually here at 8:00, so if 8:30 is agreeable, we will meet at that hour. The Court will now adjourn until 8:30 Monday morning.

(Adjourned—11:43 a. m.) [846]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 8:35 a. m. on Monday, May 27th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: The defendants stipulate that the jury is present.

The COURT: Let the stipulation be entered. Before beginning the testimony, Mr. Clark will you please hand copy of this to counsel on each side. It's an instruction which the Court has prepared as a possible substitute for Defendants' Offered No. 8. We'll take that up at a later time, but I thought I would hand it to you now so you may consider it as you have opportunity. [847]

WILLIAM E. MILES

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination

By WILLSON C. MOORE, Esq.

Q. While you were Director of the Civilian Conservation Corps, Mr. Miles, whose duty was it to order the goods for the Mess?

A. The Mess Officer.

Q. Did you ever give Mr. Cunningham any directions to order any of the goods?

A. Not at all.

Q. Did your office out there at the Civilian Conservation Corps talk over the parties, as I guess we may call them, of Mothers' Day and September 1st?

A. Yes, we did.

Q. Now, with reference to September 1st, was there any menu or anything drawn up for that ahead of time?

A. There was a list of the articles required or the foodstuffs required for the luau according to Hawaiian fashion.

Q. Do you know who made up that list?

A. We three made it up—Mr. Mookini and myself and Cunningham.

Q. When you had your list finally made up, did you direct anyone in particular to make the purchases?

A. Mr. Mookini.

Q. On that list was the item of keawe wood and those things that we've spoken of, chairs, and burlap

(Testimony of William E. Miles.)

bags, and wire [848] netting, and flowers, and cigarettes, and that stuff?

A. Of course the question of the keawe wood was an essential part of the luau on account of the imu being outside. We talked about the wood, but that was altogether separate from the foodstuffs.

Q. Did you ever direct anyone to charge the keawe wood as vegetables?

A. No, not at all.

Q. Did you have anything to do with the actual ordering of this food for the luau?

A. Actual ordering—placing of the order?

Q. Yes.

A. No.

Q. Every now and again out there at the Camp did you have trucks taken over to Wahiawa for servicing or fixing up for inspection, did you?

A. Yes, that was every week.

Q. And whose duty was that?

A. That was the duty of the superintendent and the foreman of the working gangs; each foreman has a truck with his own gang and has a driver.

Q. Did Mr. Mookini have anything to do wtih that?

A. Not that I know of.

Q. Did you ever order him to take any trucks to Wahiawa for servicing?

A. Not that I know of.

Q. Do you know how Mookini happened to get this job as Mess Officer; in other words, did you suggest him; who suggested him?

(Testimony of William E. Miles.)

A. Well, it was a general suggestion all around, because Mr. Gibson was being pressed there; he had so much to [849] do with his quartermaster duties and attending to supplies and necessities of the Camp as well as the individual enrollees themselves, it was impossible, and if I remember well, I think Mr. Mookini himself offered—I'm not certain on that——

Q. Never mind, then, if you're not certain. During the time you were at the Camp you did have various transactions with Lee Chong?

A. From the month of April on.

Q. Did you ever deal with anybody there with the exception of Lee Chong?

A. I, personally?

Q. Yes.

A. No.

Q. Did you have dealings with anybody by the name of Chun Yau Chee?

A. I don't know that name.

Q. Or Lee Kim Yip, or Lee Tim Yip?

A. I don't know any of them, I never heard of them.

Q. At the time of the delivery on May 12th did you direct Cunningham to change the item of paper plates to something else of an edible nature?

A. No, I never had a chance to talk to Cunningham.

Mr. MOORE: That's all.

(Testimony of William E. Miles.)

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Miles, what do you mean when you say that it was Mookini did the ordering? Do you mean that you personally know that he went in town and made the purchases and then Cunningham didn't do that at all? [850]

A. I personally know that when we agreed on Mookini to do the purchasing, I turned around and says, "Bob, you see that these things are bought."

Q. "You see that these things are bought." We have been talking a good deal on this trial about who goes physically in the store and puts the order down on the counter. Do you happen to know of your own knowledge that Mookini went in and put the orders on a store counter?

A. I can't swear to that.

Q. In other words, you told him to see that these things were gotten?

A. Sure.

Q. After that, they were gotten, and who actually did the getting, physically getting the groceries or whatever it was, you don't know?

A. No. If you don't mind, I'll say that I know this much, that he was in town for the purpose of making these purchases.

Q. That is, you sent him to town or you told him to go in and make the purchases?

A. Yes; he was in town for two days.

Q. Did you have any idea he was in town two days doing nothing but buying things for the Camp?

(Testimony of William E. Miles.)

A. He went to town and came back.

Q. Oh, don't you know that his wife was taken to the hospital and he had a lot of things on his mind besides this thing?

A. That's quite true.

Q. You dealt with Lee Chong as the manager of the Lee Chong Company, didn't you?

A. Yes sir. [851]

A. You never had occasion to investigate the ownership of the Company, or anything of that kind?

A. No sir.

Q. You don't know whether Mr. Mookini ever went anywhere on the trucks, or not, do you?

A. No sir.

Q. You mean, you can't say?

A. I can's say, except it was told me, that's all.

Q. Somebody had charge of the trucks; I don't think anybody has claimed that Mookini had charge of them, or anything of that kind; but whether he went with them at any time you're not in a position to say?

A. No, I'm not in position to say.

Q. Did I understand you to say that you did not even see Lee Chong on the morning when the Mothers' Day order came over there?

A. Oh yes, I saw him; I sent word I wanted to see him if he came into Camp, and he was in there.

Q. He was there, but nothing was said about oysters for flowers, or anything of that kind?

(Testimony of William E. Miles.)

A. Well, as I testified, I asked Mr. Cunningham, I said, "What is this item 500 oysters?" He said, "I think they are flowers."

Q. That was said there at that time?

A. Yes. That was my original testimony.

Q. Did you so testify on your direct examination?

A. Yes sir.

Q. So you did know, just as Mr. Lee Chong said, that the morning he brought those things there that the flowers were "oysters"? [852]

A. Yes; but when the bill was questioned for payment I was told again it was oysters—the menu showed they had oyster stew; naturally there was nothing for me to do but take the word of my trusted officers.

Q. But you knew at the time Lee Chong brought that bill of goods out there on Mothers' Day that the item of oysters represented flowers?

A. I didn't know it at that time.

Q. What have you been telling me just now? Didn't you just say that Cunningham did say it was flowers?

A. Cunningham is the one that said, "I think it's for flowers"; then, later on, when our office told me we had oyster stew, I took their word for it.

Q. Cunningham told you that morning that he thought the "oysters" were flowers?

A. Yes.

Q. You were there, and there weren't any oysters coming on that load?

(Testimony of William E. Miles.)

A. He wasn't certain.

Q. Didn't you feel you had some obligation to the United States Government to find out?

A. I did find out before I paid the bill, and he told me it was oysters.

Q. You did find out before you paid the bill?

A. Yes.

Q. Don't you know that you paid for oysters, and then, three or four months later, you made a revision on this thing?

A. That was when the correct story came to me. [853]

Q. You still want this jury to understand that you have not received any offer of immunity or anything of that kind for testifying for the Government?

A. I do.

Mr. ULRICH: That's all.

Re-direct Examination.

By WILLSON C. MOORE, Esq.

Q. As I understand it, Mr. Miles, Cunningham when this load came out said something about these oysters being flowers, and later on you talked to Mookini and he told you that Cunningham was "crazy" and that that was for oyster stew, and showed you the menu with oysters on the menu?

A. There was a scratch menu that they had; they didn't have a regular form at the time.

Q. Then it wasn't until September that you found out this was correct?

(Testimony of William E. Miles.)

A. Until I made my own investigation of it in the latter part of August.

Mr. MOORE: That's all.

Re-cross Examination.

By BARRY S. ULRICH, Esq.

Q. When was it you had this conversation with Mr. Mookini relative to this being oyster stew?

A. We were checking up on the bills before payment; I says, "I understand Cunningham says this 500 oysters is for flowers." He laughed at me; "Why no, Captain," he says, "it's oyster stew."

Q. Where was this?

A. Right in the office there, right at my desk. [854]

Q. That was before he really had found out that they were flowers?

A. Who really had found out?

Q. Mr. Mookini; Mr. Mookini has said that he didn't know that they were flowers until considerably later.

A. I don't know what Mr. Mookini said, but what he told me——

Q. I thought he really had said there were oysters, and that there were oysters on the bill of fare? That's the conversation you're talking about?

A. That's what he told me, yes.

Mr. ULRICH: That's all.

JOHN EDWARD CUNNINGHAM

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Mr. Cunningham,——

A. Yes sir.

Q. Talking of the order of May 12th, that is, the Mothers' Day order, did you direct Mr. Lee Chong to charge the flowers as oysters?

A. No sir.

Q. Did you tell Mr. Lee Chong that Miles had directed you to inform him or ask him to charge the flowers as oysters?

A. No sir.

Q. Showing you United States Exhibit "D", which is the voucher substituted for the one in which the goods were delivered for the May 12th day party, or Mothers' Day party, you see that signature there (indicating)?

A. Yes sir.

Q. Were you present when that was signed? [855]

A. Yes sir; that's the very same one I had, sir.

Q. Where was that signed?

A. It was signed right at the breakfast table in the dining room, sir.

Q. And with the one that you referred to, what did you do with the one that was signed at the breakfast table?

A. Kept that in my pocket, sir.

(Testimony of John Edward Cunningham.)

Q. Will you take a look at that (indicating); is that the same one?

A. Looks like it.

Q. Showing you this exhibit, did you ever see that before? That's handing the witness United States Exhibit "C".

Mr. ULRICH: Let me see the one he kept in his pocket.

(Mr. Moore shows document to Mr. Ulrich.)

A. I believe this is the one I kept.

Q. This is the one you kept in your pocket?

A. Yes; it's folded up.

Q. Showing you United States Exhibit "D" again—the one he said he kept in his pocket is "C"——

A. It's "C". I don't know where that one was signed.

Q. You don't know where that one was signed?

A. No sir.

Q. Were you ever down to Lee Chong's after this May 12th affair and when a voucher was signed down there by Mr. Mookini?

A. I was down there two or three days after that, and I believe that Mr. Mookini had some of the vouchers fixed up, and he signed them, sir.

Q. Did he ask you anything about them? [856]

A. Well, he says, "Is everything all right?" I says, "I suppose so." He done the ordering, sir.

Q. Now, with reference to this Exhibit "C", the one that you kept in your pocket, were you ever requested at any time by Mookini to produce that?

(Testimony of John Edward Cunningham.)

A. Yes sir; he asked me about this bill on Monday, I believe.

Q. That's Monday following Mothers' Day?

A. Yes sir. I told him I didn't know what became of it. I had it in my pocket and I thought I sent it with my clothing to the laundry.

Q. What did he say?

A. He said, "That's all right, I'll get the other copy down at Lee Chong's, I'll have to do some changing."

Q. Now, this luau order, did you give that order?

A. I gave it to Mr. Mookini, sir.

Q. Did you give it to Lee Chong?

A. No sir.

Q. Did you direct anybody at Lee Chong's to fill that order?

A. I went with Mr. Mookini down there, and Mr. Mookini gave Mr. Lee Chong the order.

Q. Now, on the day this stuff was delivered for the luau did you go back to Camp with any of it?

A. The following morning——

Q. The morning following what?

A. The morning of the delivery for the luau Mr. Mookini sent me down to get the pork—the pigs and other meat for the luau and the laulau stuff there, so as to give us a start on making our laulaus.

Q. And how did you take the pork and the luau stuff out there?

A. Took it out on Lee Chong's truck, sir. [857]

Q. On Lee Chong's truck?

(Testimony of John Edward Cunningham.)

A. Yes sir, Lee Chong delivered it out there, sir.

Q. How did you go back to Camp?

A. I went back with Lee Chong, on Lee Chong's truck.

Q. How many loads of this stuff went out there?

A. Two loads, sir.

Q. And how did the first load go?

A. I went out with the first load, sir, and the other load came out in the afternoon.

Q. And the first load consisted of what?

A. Of luau; three pigs, pork, some beef, some mixed up with the pork for the laulaus, and several other items; I believe sweet potatoes come out with that also.

Q. That's the stuff you have to put in the imu?

A. Yes sir.

Q. The other stuff came on later?

A. The other stuff came later. I believe some ti leaves went out with that same order.

Q. Does that go into the imu, too?

A. Yes sir, for making the laulaus out of the pork and the beef.

Q. When the second load was delivered did the voucher come out on that, do you know?

A. On the second load, yes sir.

Q. These are your initials on United States Exhibit "G", are they?

A. Yes sir.

Q. Is that the voucher for that September the first?

A. September the first, sir.

(Testimony of John Edward Cunningham.)

Q. During this period of time that you were cook out [858] there, did you ever get any drinks from Lee Chong?

A. Yes sir, all the time.

Q. Who put out the liquor?

A. Lee Chong did, sir.

Q. Did you ever bring any there yourself?

A. Only once; I got tired of waiting for him—he was out; I bought myself a bottle and sat there and drank half of it, and when I got through I took the other half out.

Q. What kind of liquor was that?

A. That was gin I bought; I bought it at the Corner Drug Store.

Q. That's the only time you brought your drinks?

A. That's the only time; all the rest of the time Lee Chong put it up, Sir.

Mr. MOORE: That's all.

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. I understand you now to testify, Mr. Cunningham, that you had nothing to do with directing the changes that were made in the Mothers' Day order, is that right?

A. I didn't sir.

Q. What?

A. I didn't.

Q. You had nothing to do with it, is that right?

A. Nothing to do with the changing, sir.

(Testimony of John Edward Cunningham.)

Q. You didn't even know that they were being changed, I suppose—or did you?

A. I knew afterwards, when Mr. Mookini asked for the bill, to go down and have it changed,—that he wanted some changing done. [859]

Q. All the people that have testified in this case, except you, they all seem to agree that you were there; but that is not true, you were not there at all when the changes were requested?

A. I was down there, as I said, two or three days after this party there, when Mr. Mookini was making the changes there, which I didn't know nothing about it; when this voucher came out camouflaged I didn't know nothing about it.

Q. You said you had no conversation at any time with Mr. Lee Chong about oysters as flowers?

A. No sir; liquor come out as oytsers.

Q. You had no talk with Roque about oysters as flowers?

A. No sir.

Q. You didn't have anything in your mind concerning oysters connected with flowers; it was liquor, so far as you were concerned, is that the idea?

A. All I can say is that when Lee Chong brought this liquor out he told me he had to mark it as oysters.

Q. And the first thing you knew about anything being wrong with this order was when Mr. Lee Chong came to you and said, "Here's some liquor;

(Testimony of John Edward Cunningham.)

I have marked it as oysters; I want you to give it to Mookini"?

A. No sir. I asked Lee Chong, "What you want to do it for?" He says, "I can't help; he force me."

Q. What happened was that he brings this liquor over to you, carries it in a box?

A. He handed it to me; I carried it.

Q. He must have carried it if he handed it to you; he carried it from the truck? [860]

A. He handed it from the truck.

Q. He just did this—lifted it over to you?

A. Yes sir.

Q. Here was a great big sign which said "Mookini"?

A. "Robert Mookini".

Q. "Robert Mookini" in stenciled work on the box?

A. Not stenciled, no; it was handwriting, sir.

Q. Handwriting?

A. Not stenciled.

Q. How big were the letters?

A. About 3 inches.

Q. Three inches high; that's a fairly sizable letter; and that was just spread right across the top of the box?

A. Exactly.

Q. "Robert Mookini"?

A. Yes sir.

Q. Anybody looking at that load of goods wouldn't have any trouble seeing that sign on that box?

(Testimony of John Edward Cunningham.)

A. It even was marked "Handle with care".

Q. All on the top of the box, "Robert Mookini; handle with care"?

A. Yes sir.

Q. Three inch letters, black letters?

A. Right you are.

Q. And he brings this box over to you and says that "I have marked these as oysters; Mookini forced me to do it; please give it to him"? I don't mean in those words, but that was the substance of it?

A. Well, say what you mean so I can understand you. He handed me this box, showed me the bill that he had marked as oysters—the oysters was liquor; and the rest [861] of the articles were camouflaged. "Why," I told Lee Chong, "why did you do this; do you want to get yourself in trouble?"

Q. Oh I know, you've explained all that. Then he explained he was forced to do it. Do I understand you to say—showing you the United States Exhibit "C", a carbon copy of the first bill that came out with the Mothers' Day load; is that the document that you carried around in your pocket?

A. Yes sir.

Q. That's the document that Mr. Mookini signed at the breakfast table, I believe you said, is that right?

A. Yes sir.

Q. What became of the original bill?

A. Lee Chong took it back, sir.

(Testimony of John Edward Cunningham.)

Q. And you had OK'd this one?

A. Yes sir.

Q. You carried this thing around in your pocket until some time in September, is that right?

A. No sir.

Q. When did you stop carrying it around in your pocket?

A. I stopped carrying it around in my pocket for about a couple of weeks, and then I put it away.

Q. You carried it, with the exception of two weeks, then, until some time in September, is that right?

A. No sir; until about August 12th.

Q. August 12th?

A. August 12th to August 14th.

Q. What brought the matter to a head on August 12th?

A. I turned that bill in to Captain Miles; I showed that bill to Captain Miles, and I held on to that bill until I was called in to Mr. Lloyd's office. [862]

Q. All right; then, from May 12th, June 12th, July 12th, August 12th, it was in your pocket?

A. It wasn't; I just told you I only kept it——

Q. Except two weeks?

A. No sir; I kept it in my pocket for two weeks, for safe-keeping.

Q. Was that the two weeks immediately following the time when you got it?

A. From the time I got it.

(Testimony of John Edward Cunningham.)

Q. That's the time you had it in your pocket for two weeks?

A. For two weeks.

Q. Did this conversation you tell us about this morning, when you met Mr. Mookini on the Monday —was that following Mothers' Day?

A. He met me, he asked me for the bill.

Q. He asked you for the bill, and you told him it had gone to Lee Chong's?

A. I told him I didn't know what had become of it, that it went to the laundry with my clothes.

Q. At that time you had it in your pocket?

A. I did.

Q. Now these other bills—showing you the Government's Exhibit "D", that's the bill with Mr. Mookini's name on it, also dated May 12th, without the paper plates and so forth; when do you now tell us you first saw that bill?

A. That bill was down in his office.

Q. Whose office?

A. Lee Chong's office.

Q. Lee Chong's office?

A. Yes sir, when Mr. Mookini signed these bills. [863]

Q. Were you there?

A. I believe I was there at the time.

Q. Well, you have been testifying right along here; what do you understand you've already told us;—that you were there, or you weren't there?

A. I was there afterwards.

(Testimony of John Edward Cunningham.)

Q. You were there afterwards?

A. About two or three days afterwards. He went down Monday to have these changed, and I believe I went there about Wednesday with him.

Q. Tell me whether you were there when he signed it, or not.

A. He signed those bills when I was there.

Q. Then you were there when he signed them?

A. Yes sir.

Q. What's this talk about "two or three days later"?

A. It was later when we went down when these bills were signed.

Q. Later than what?

A. I just told you, Wednesday.

Q. Later than Wednesday?

A. He went down Monday to have this bill straightened up, and we called there a couple of days later and he signed these bills; he asked me if they were all right.

Q. And you said they were, and he signed?

A. I said, "I guess you ought to know", and he signed them.

Q. There has been evidence to the effect that you were in there and had these things changed, and went out?

A. No sir, I had nothing changed.

Q. You had nothing changed? [864]

A. No sir, I had no authority to have nothing changed.

(Testimony of John Edward Cunningham.)

Q. And nobody had said anything to you about changing these things?

A. Mr. Mookini told me, he asked me for my copy, that he had to go down and have some changes made on the bills.

Q. And then when he asked you for the copy you said you couldn't find it, is that right?

A. I didn't try to find it.

Q. I say, you told him you couldn't find it?

A. I told him I didn't have it, that I didn't know what became of it—what I just told you.

Q. That was the time he said he wanted to have it taken down to have changes made?

A. That's what he wanted.

Q. Then you didn't have any talk with Mr. Mookini or Mr. Roque or anybody over there at all about this matter, and the first thing you knew about any bills being OK'd down there was when you were down there two or three days later, when Mookini asked you and you said "You ought to know", or something like that, and he signed?

A. Yes sir.

Q. Did you go in together on that occasion?

A. Yes, I believe we did go in together.

Q. And when you got in there was it already to be signed?

A. No, it wasn't; we had a few "shots"—the bottle came out and we had a few "shots" and kept on drinking, and finally brought this out.

(Testimony of John Edward Cunningham.)

Q. Would you say you had reached the stage of intoxication before this came out?

A. Why no. [865]

Q. How long had you been drinking before this came out, as you expressed it?

A. 15 or 20 minutes, maybe half an hour.

Q. And who brought it out?

A. Mr. Lee Chong.

Q. Roque wasn't even there?

A. Every time we went in, Roque would walk out, but when we wanted ice water or ginger ale Roque would wait on us.

Q. Mr. Roque had walked out; he didn't bring out the bill?

A. I don't know whether he brought the bill out or not; Lee Chong handed Mr. Roque the bill.

Q. I thought Roque had walked out on you.

A. Roque always walked out when we went in.

Q. And Roque handed you the bill?

A. He did not, I told you; he handed it to Mookini.

Q. He did not hand you the bill, he brought it out, is that right?

A. Yes sir.

Q. Did you tell us on your direct examination even so much that you had said the bill was all ready or you guessed it was all ready, or is that an afterthought that you're giving us now?

A. No, I'm not giving you nothing now; I didn't think it out very much.

(Testimony of John Edward Cunningham.)

Q. Did you tell us on your direct examination that you even said the bill was all right on that occasion?

A. He asked me——

Q. I am asking you what you testified to the last time [866] you were on the witness stand, if you know; and if you don't know, say so.

A. He asked me if it's all right; I says, "I guess so; you ought to know."

Q. Did you say that when you testified a few days ago?

A. Oh, something to that effect, I believe; I don't remember.

Q. As I understand your testimony now, the Labor Day order went out on two deliveries, is that right?

Mr. MOORE: No, that is not the testimony; it's the September 1st.

Mr. ULRICH: The Labor Day order, the September 1st.

Mr. MOORE: I was thinking of Mothers' Day; you're right, Mr. Ulrich; I'm sorry.

Mr. ULRICH: As I understood you to testify a moment ago, that September 1st order went out on two loads, is that right?

A. It did.

Q. And one of those loads was a load that you took out with one of Lee Chong's trucks, is that right?

A. I went out with Lee Chong's truck; Lee Chong had to deliver that out there.

(Testimony of John Edward Cunningham.)

Q. And that was one of the Labor Day loads?

A. Yes sir, for the luau.

Q. The luau loads, yes. Who drove the truck?

A. I believe it was Yaga, a Japanese boy there.

Q. Yaga, a Japanese boy that works for Lee Chong?

A. Yes.

Q. Anybody else on the load?

A. Probably his little son Henry; I really don't remember; [867] probably his little son was on the wagon at the same time.

Q. Henry Lee, or whatever his name is?

A. Hendry.

Q. And that load took the keawe wood and Hawaiian foods or luau material?

A. No keawe wood was on that load; the keawe wood came out afterwards.

Q. But the luau, and the different things for the luau, the Hawaiian foods?

A. Some of it.

Q. Do you know how the other load went out?

A. It come out in the afternoon.

Q. Oh.

A. By, I believe, the same driver he had there.

Q. The same driver he had there on both loads came out on Lee Chong's truck, is that right?

A. Yes sir.

Q. And the bill for the September 1st load came out to the Camp with the load and was there signed by you, is that right?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. Now, you're perfectly sure that that was signed out at the Camp when the load was delivered?

A. There's always a bill delivered with the goods.

Q. Yes, and that these goods were delivered by Lee Chong's trucks or Lee Chong's truck to the Camp, and the last load carried the bill, which you signed as you received the material out there at the Camp, is that right?

(Witness hesitates)

Q. Well, that's what you told us a few moments ago. [868]

A. Just a minute, just give me a second to think. I believe at that time one of our C. C. trucks brought the firewood, the wire, that called at Lee Chong's for this stuff.

Q. Well, do you want to change your evidence given a little while ago about that; you wouldn't say that you didn't really know, that you were just guessing at it, or anything like that, would you; do you really want to tell us that you're in doubt about these things now, Mr. Cunningham?

A. Just a minute; let me think.

Q. How is it that you have to stop and think—you don't know?

A. No, there were two deliveries made.

Q. Well, were these Lee Chong's trucks, or C. C. C. Camp trucks?

A. Lee Chong's truck, because the C. C. wagon had to go out and get rock to bring out; no, that ran for the imu.

(Testimony of John Edward Cunningham.)

Q. So now you're sure, quite, that both deliveries were on Lee Chong's truck?

A. The two deliveries he made.

Q. And no longer are you in any uncertainty on that?

A. No; two deliveries.

Q. And you, of course, recall signing this just as you did the Mothers' Day order and all that sort of thing, when they were delivered out there?

A. Not the Mothers' Day order; Mr. Mookini signed the Mothers' Day order.

Q. Do you want to say that you didn't receive the Mothers' Day order and sign for it? [869]

A. No, but you just accused me as though I signed both of the orders.

Q. I'm not trying to accuse you of anything, Mr. Mookini.

A. No, I'm not Mookini, thank you.

Q. No, I'll say you're not. I am trying to ask you whether you signed it when you got this order, as you signed for the Mothers' Day order as it came out; and if you want to change your testimony about signing for the Mothers' Day order, say so.

A. I signed for this; my signature is there.

Q. Do you mean to say you didn't sign for the Mothers' Day order when it came out?

A. I signed for the one, and Mr. Mookini for the other.

Q. In other words, Mr. Mookini signed for the Mothers' Day order when it came out?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. What in the world is your signature doing on the Mothers' Day order? You told us at first, you admitted that you had signed for it; do you want to change that testimony? Here's the Mothers' Day bill (indicating); when this came out there didn't you sign for it?

A. I signed for it, and made Mr. Mookini sign the original.

Q. You took the other into the Mess room and had him sign it while he was sitting at breakfast?

A. Yes sir.

Q. Why did you say you didn't sign for the Mothers' Day order when it came out?

A. I did sign for this one, but not for the one with the lines on it. [870]

Q. It's your testimony that it was Mr. Mookini put those lines there?

A. I don't know that Mr. Mookini put those lines there; when I signed that bill there was no lines on there.

Q. Didn't you say on your direct examination that Mookini had put those lines there?

A. No, I don't know who put those lines there. When I signed that bill there were no lines there.

Q. You're now willing to agree that you did sign for the goods when they came out there?

A. I did sign, yes; my signature is there.

Q. And only once did you buy any liquor that you drank in Lee Chong's place, is that right?

A. That's right.

(Testimony of John Edward Cunningham.)

Q. I recall your testimony now, Mr. Cunningham, to be to the effect that until some time later you had thought that the oysters represented booze, is that right?

A. I didn't think so; I knew so.

Q. You knew so?

A. From Lee Chong's own statement to me, his own word to me.

Q. Now, is it not true, Mr. Cunningham, that the first day when that load came out there you and Mr. Miles were standing together, and Mr. Miles asked you whether or not these oysters had been delivered, and you said you thought that the oysters were flowers; isn't that true?

A. No, that's not true.

Q. That's not true?

A. Just a minute, I'll explain what happened.

Q. Go ahead. [871]

A. I was out in the road, and Mr. Miles told me when Lee Chong came out there he wanted to see him. All of a sudden Lee Chong's truck blowed in. I said, "Lee, Mr. Miles wants to see you." So Mr. Miles said, "Well, Lee, what have you got for us?" Lee got the bill from his son and handed him. Miles says, "500 oysters, what's that, is it liquor?" I says, "I don't know, maybe it's flowers." He said, "I don't know." Then they had a talk together and Lee Chong handed me the bill and said, "You better go check your stuff"; so I went on checking it, and when the wagon was about half unloaded Mr. Miles

(Testimony of John Edward Cunningham.)

came in the kitchen then; he asked me, "How's everything?" I said, "Everything is all right so far." So then Lee Chong called me outside when Mr. Miles walked away, and he told me, "Cunningham, I got a box for Bob." I said, "A box of what?" He said, "Some booze."

Q. You've told us that a lot of times.

A. And he said, "I had to mark that down as oysters."

Q. To get back to your conversation with Miles: A few moments ago you told me in answer to a question I asked you had not told Mr. Miles or said anything to Mr. Miles about these oysters being flowers. Now in the answer you give me you slipped in something about flowers. Did you or did you not say that those oysters were or that they might be flowers?

A. I did not tell Mr. Cunningham,—I mean, Mr. Miles; just as I explained to you—

Q. Will you answer my question, please. You've done a great deal of explaining. I want an answer "Yes" or "No"; then I'll step aside and you can do all the [872] explaining you want. Did you or did you not say anything to Mr. Miles about these oysters being flowers?

A. I said I thought they were.

Q. What did you mean by telling us you had no idea about their being flowers?

A. How did I know what was in the box; how did I know what Mookini ordered?

(Testimony of John Edward Cunningham.)

Q. Well, why were you telling him about flowers?

A. Because I didn't know.

Q. Why did you think they were flowers unless you had some idea of the change?

A. I didn't know until I got this voucher.

Q. Where did you get this flower idea from?

A. Because there were flowers for Mothers' Day.

Q. There for the first time it occurred to you, when Mr. Miles spoke to you, that the oysters might be flowers?

A. I told him, "I don't know until I look this up"; he said, "What's this item of 500 oysters, Johnny?" I said, "I don't know, maybe it's flowers, maybe something, I don't know."

Q. But, even so, you did say they might be flowers?

A. I did say they might be flowers, and I said I didn't know.

Q. But didn't say that it was flowers?

A. No sir; I didn't know nothing about it until the truck was empty, when the box of liquor was handed to me, then I knew it was marked as flowers because Mr. Lee Chong told me.

Q. And then Lee Chong did this little talk about being forced to bring the liquor.

(No response). [873]

Mr. ULRICH: I think that's all.

The COURT: Mr. Cunningham, just one question. Do your friends, when they speak to you familiarly, call you "Jack"?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. There has been quite a bit of evidence here about "Jack" in connection with matters that you were connected with.

A. That's correct.

Q. And that's the way they commonly address you, just like any other John?

A. Yes sir.

The COURT: That's all.

(Recess—9:23 to 9:35 a. m.)

JAMES R. MAHAFFY

being recalled to the stand as a witness for the Plaintiff, in rebuttal, testified further as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. Major, did you ever ask Mookini to be Mess Officer—I mean, go out and solicit him for your Mess Officer?

A. No sir.

Q. Did you state at any time that unless somebody took over the Mess that you would lose your first month's pay and would have to pay it out to cover the shortage?

A. No sir.

Q. Was there any conversation with reference to shortage in the Mess?

A. Well, I can explain just the situation——

(Testimony of James R. Mahaffy.)

Q. All right, let's have it. [874]

A. I drew a certain amount of advance rations, I think it was $475.00; there were dozens of things going on during the organization of the Camp, and my impression was that that $475.00 could be absorbed in this storeroom or in a month or two; and as I got along, about somewheres, I guess, the 20th of the month, it came to the ration account I knew had to be straightened up at the end of the month, and I inquired to see whether that advance ration went in the storeroom,—I had forgotten—and learned that it didn't; that that advance ration was simply given in advance and would have to be accounted for at the end of the month; then I told someone—I think it was Mr. Miles—to give me an audit of how we stood, and I found that we were still ahead in money and still ahead in the storeroom, and counting in the $475.00. Now, I do recall—we were sitting around—of saying that if this Mess account, yes, if the Mess account was short there was nothing in the regulations that prohibited me from charging a pro rata to every officer that was boarding at the Mess, because I wasn't allowed any rations for the boarders; that's the way that might have come, but that was more in a joke than anything else; I understood thoroughly how the rations should be offset; I had that audited.

Q. And, with reference to that first month that you were there, who was the person or persons that actually watched that Mess so that it came out over and above-board?

(Testimony of James R. Mahaffy.)

A. Well, up until this time Gibson was the man that was in charge of the purchasing and, well, in fact, up until that time that I asked for the audit I think everybody [875] was watching the Mess; we were all interested in seing how it went along; I couldn't state it was any particular person except Gibson who was responsible as quartermaster.

Q. Now, how did you say it was that Mookini became Mess Officer?

A. Along about this time Mr. Miles and Mookini came in—I explained this before——

Q. You've already explained that before?

A. Yes.

Q. Then we don't want any rehash of it. I think's that's all, Major Mahaffy.

CrossExamination.

By BARRY S. ULRICH, Esq.

Q. So whatever was said about making up any funds, anything like that, out of your pocket or anybody else's pocket, was just a sort of joking remark passed in connection with this set of circumstances that you've told us about?

A. Yes sir.

Q. There has been some evidence here about your having to drag Mookini out of bed, or some such thing as that. Did you ever have to drag Mookini out of bed?

A. No sir. It would be a hard job for me.

Q. Did you ever try to get him out of bed, or anything like that, in the morning?

(Testimony of James R. Mahaffy.)

A. No sir. We had an argument about the calisthenics when the Camp first started.

Q. You had some argument about calisthenics?

A. Yes.

Q. It wasn't inspired by any refusal of Mr. Mookini to get up in the morning, or anything like that?

A. No sir. [876]

Mr. ULRICH: That's all.

Re-Direct Examination.

By WILLSON C. MOORE, Esq.

Q. About this calisthenics, what was this argument?

A. Well, when the Camp first started I said the very day that the boys came out there that they must have calisthenics in the morning starting out, and Mr. Mookini was under the impression that we should wait a while.

Q. And what did you say in reply?

A. I said that should start the first morning, and that if he didn't want to do it, I would do it myself.

Q. Was there anything said by him that you shouldn't do it because these boys had been vaccinated?

A. No sir; they hadn't been vaccinated then.

Re-Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Try to recall now, Major, if you will, what happened with reference to vaccination. The only

(Testimony of James R. Mahaffy.)

"shot" that they get is when they come out there?

A. "Shot in the arm", yes.

Q. Do you remember when they got that "shot"?

A. That started the day after they came.

Q. I think you want to try to remember this thing as best you can?

A. Yes, I do.

Q. Isn't it possible that there may have been some discussion between you and Mr. Mookini about their having had some innoculation before that time?

A. Yes sir, there could have been, and if there had been, as I recall, the only one that could excuse anyone [877] from calisthenics was the doctor.

Q. But that might have entered into the discussion, might it not?

A. About this particular time, no sir, there wasn't any discussion over it; I just said that's what I wanted; that was the first day.

Q. Well, they were to be innoculated—either had been innoculated or were to be innoculated next day, were they not?

A. Yes, they were to be innoculated in a group.

Q. They really were being innoculated?

A. Yes sir.

Q. Can't you understand that there might be some question in the mind of Mookini whether they ought to take calisthenics?

A. Yes, there could have been, but I thought that the doctor was the one to be responsible for that and was the one to make the decision.

(Testimony of James R. Mahaffy.)

Q. So that, that could have been a part of the discussion?

A. Oh yes, sure, yes sir.

Mr. ULRICH: That's all, Major.

Mr. MOORE: That's all.

DR. JAMES ENRIGHT

was duly called and sworn as a witness for the Plaintiff, in rebuttal, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. James Enright.

Q. Your profession?

A. I am a physician and surgeon. [878]

Q. Practicing your profession now in the Territory of Hawaii?

A. Yes.

Q. And are you connected in any way with the Civilian Conservation Corps?

A. Yes; I am the physician and surgeon for the C. C. C. Camp at Schofield.

Q. And when did you first get that position, Doctor?

A. In the last two days in January, 1934.

Q. And you continued right through and are still in that position?

A. Yes sir.

(Testimony of Dr. James Enright.)

Q. Do you know Mr. Mookini?

A. I do.

Q. And at one time he was an officer out there at the Camp?

A. Yes sir.

Q. Do you recall one morning some time after this luau of September 1st of last year, of having a meal over at Kemoo Farm where you had a conversation with Mr. Mookini?

A. I remember.

Q. And at that time there was some discussion about the Camp; do you recall any particular conversation by Mr. Mookini about anyone in Camp?

A. Yes sir.

Q. Just give us that, to the best of your recollection, doctor.

A. This was, I believe, a Monday morning; I went down to Kemoo Farm to get a cup of coffee, and while I was there Mr. Mookini stepped in to the place, and he had an order of something, and at the time he said to me, he says, "Those sons of bitches up at the Camp"—— [879]

Q. Give us the language; there's no women here, or if there is we can't help it.

A. "Those sons of bitches up at the Camp are talking about me; I'm ready for them and I'm going to get them, and one of them is Cunningham."

Q. At the beginning of this Camp, doctor, did you visit the store of Mr. Lee Chong with Mr. Mookini?

A. Yes, about two or three times.

(Testimony of Dr. James Enright.)

Q. Did you ever talk anything about getting any groceries there?

A. Yes sir.

Q. Who was that conversation with?

A. That conversation was with Mr. Lee Chong.

Q. Was Mr. Mookini there?

A. Yes sir.

Q. All right; let's have that conversation to the best of your recollection.

A. Mr. Mookini took me down to Lee Chong's; he was rather enthusiastic over the quality of the vegetables that we were getting there. We went down to Lee Chong's, and we were talking about the way he handled the business, that he used to wholesale to the ships, telling me more or less how he ran his shop; and I had asked him if it were possible for me—if he retailed as well as wholesaled; he said yes; I asked him if it was all right if I could buy vegetables there for my own home, and I told him I might have to run up a bill to the end of the month, that most of the time at the Camp I would leave my money at home and on the way home I would like to pick up some vegetables but I might not have sufficient at the time to pay for them; so he [880] thought a second, then he said, "Yes, that will be perfectly all right; I might be able to arrange it so you wouldn't have to pay for them." I said, "Well, I want to pay for everything I get here." And I had made several purchases at different times; I ran a bill for a few days, and I paid them all, and I have the receipts.

Mr. MOORE: That's all, Doctor.

(Testimony of Dr. James Enright.)

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. When was this talk in Lee Chong's office or in Lee Chong's place of business?

A. I could not recall the exact date; it was rather early in the period of the Camp, during the time that the vegetables were being purchased from Lee Chong.

Q. Yes. Now, Lee Chong told you that it could be arranged so that you could have an account there, or something of that kind?

A. Yes.

Q. You wanted to know if you could drop in and buy groceries from time to time, and so forth?

A. Yes.

Q. And now Lee Chong told you that it could be arranged so that you wouldn't have to pay for those groceries?

A. No; he said it might be possible to have it arranged so I would not have to pay for them.

Q. Well, apropos of what was such a remark made? Had you suggested anything of the kind, that you wanted him to give you any groceries?

A. No.

Q. Any details gone into as to——

A. None. [881]

Q. You say Mookini was there?

A. Yes.

Q. Now, is this the Mr. Lee Chong you're talking about, sitting here (indicating)?

(Testimony of Dr. James Enright.)

A. Yes, that's Mr. Lee Chong.

Q. Anybody else there?

A. Not that I recall; just the three of us, I believe.

Q. And it was about what month?

A. Beg your pardon?

Q. About what month?

A. I could not recall the month at all; I know it was during the time we were buying vegetables from Lee Chong.

Q. Anything said about the amount of groceries or of vegetables that it might be possible to give you for nothing, or anything like that?

A. No.

Q. You sat on the idea immediately and said you didn't want to do that, or something?

A. I did; and it was never mentioned again.

Q. But you did go ahead and get some things there from time to time?

A. I did.

Q. And bills were rendered to you, were they?

A. Yes.

Q. And you paid for them?

A. I did.

Q. When Mr. Mookini told you about these people over at the Camp that he was going to "get" —is that the word that you said?

A. Yes.

Q. Did he tell you what they had done?

A. No.

(Testimony of Dr. James Enright.)

Q. Explain to you why they were going to be gotten, or [882] anything of that kind?

A. No.

Q. Cunningham was the only one he mentioned?

A. The only one by name.

Q. Did he say anything that led you to know that Miles was another one?

A. No.

Q. Just Cunningham?

A. Just Cunningham.

Q. And that conversation was when?

A. That conversation was some time after September, or some time in September, at the time —the time I place it is because Mr. Mookini—we had always been good friends—and Mr. Mookini had told me this, and it was the first inkling I had that anything was wrong at the Camp;——

Q. Did you know that there was under way at that time an investigation of Miles and charges against Lee Chong?

A. No, I did not; I didn't know there was anything serious; there was some talk about it; but when Mr. Mookini said——

Q. I'm just trying to place it; the record shows that some time early in September an investigation was started. You didn't know anything about that?

A. No, I did not.

Q. Or the charges or counter-charges, or anything at all?

A. Not at all.

Q. You remember there was a time when Miles was relieved of duty out there, don't you?

(Testimony of Dr. James Enright.)

A. Yes.

Q. When was this conversation with reference to that; very long before that, or after? [883]

A. When Mr. Miles was relieved of duty?

Q. Yes.

A. That was, I believe, in the following April——

Q. Oh no, you're wrong; Miles was let out on October 12th.

A. October, that's right.

Q. Your conversation with Mookini, when was that with reference to that time?

A. That was before that time;——

Q. Was it long before?

A. It was shortly after the early part of September, after the luau, and I'm pretty sure it was a Monday.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

The COURT: You're excused, Doctor.

Mr. MOORE: The United States rests.

MONTY ROQUE

being recalled to the stand as a witness for the Defendants, testified further as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Roque, one thing I am calling you back to get in that I didn't put in when you were on

(Testimony of Monty Roque.)

before. There has been some evidence since you were on the stand, about whether or not you kept an account or statement of these C. C. C. Camp purchases other than these invoices. Did you keep such a record?

A. The only record that I had is the memorandum on that other book of all the checks that were received; is that what you meant, the monthly statements? [884]

Q. As a matter of fact, the evidence has referred to a gray book that you kept.

A. I haven't any book that I have kept except this one (indicating), and the other one.

Q. This is the one we're talking about; this isn't in evidence yet. I show you a book entitled "C. C. C. Camp, Schofield Barracks, Upper Post", starting April 7th, 1934, and continuing down through and including October 13, 1934, and I ask you what that is?

A. That's the purchases of the C. C. C. Camp from the store.

Q. Did you ever try to hide this from anybody?

A. No, I never did.

Q. As a matter of fact, what initials are these on here, if you know?

A. Well, that's Captain Deville's.

Q. You showed him the book, didn't you?

A. Yes.

Q. He took it away, as a matter of fact?

A. He asked for it.

(Testimony of Monty Roque.)

Q. And this contains the statement of the Mothers' Day order, doesn't it, and the September 1st order?

A. Yes sir.

Q. Turn to the Mothers' Day order there.

A. That there (indicating) is it.

Q. May 12th, on page 7 here?

A. Yes sir.

Q. Now I'll ask you to state when that statement was made up with reference to the sending of the goods out there or returning of the invoices, or when; did you make that up before you sent the goods out; did you make it up as you purchased the materials for the purpose of sending it [885] out there, or after the goods had been sent out and you had gotten the receipts for the deliveries?

A. After it's OK'd, then I put it all in the book.

Q. In other words, you took this from the delivery receipts, is that right?

A. Yes sir.

Q. So that this statement of May 12th, 1934, would represent and be the same as the first statement that went out there?

A. No; after it's been OK'd,——

Q. After it's been OK'd, is that right?

A. Yes sir.

Q. That would correspond, then, with Government's Exhibit "B"?

A. No; after it's been OK'd—you see, when I received this bill they told me that it has to be

(Testimony of Monty Roque.)

changed, you see, and so I didn't put it in the book, so I want to keep my books clear, and keeping this original to show what was delivered, you see.

Q. I see. You're right, this is the same, then, as the other bill——

A. Yes, after it's been OK'd and I put it in the book.

Q. This was put in there after the alterations had been made, and it corresponds in there with Government's Exhibit "D", is that right? Just check that; I just want to be sure what it shows.

A. Yes, that's the one.

Q. As to the September 1st order, which I show you, beginning at the top of page 25, that would be the same as the Government's Exhibit "G"; just see if that is right?

A. Yes sir, that's the one.

Q. Is that right?

A. Right. [886]

Q. In other words, after the alterations or changes were made, is that right?

Mr. MOORE: No, no, that's the way it came out originally.

Mr. ULRICH: Well, it did not include—I'll put it this way: With reference to the luau bill, it did not include the keawe wood and other non-edible items which had been put in here as vegetables?

A. No; it's because it was already arranged to be changed before I made the bill.

(Testimony of Monty Roque.)

Q. I understand. Is this all in your handwriting?

A. Yes sir.

Q. I call your attention to something here, 50 pounds California yams, on page 25 of this book, and to some writing, obviously in the hand of some other person, next to that item, "only 25 paid for"; do you know whose handwriting that is?

A. If I'm not mistaken, it's Captain Deville's.

Q. Does it correspond with the other Deville writing on this paper?

A. He's the only one that took this book from me, you see.

Q. That wasn't made by you or anybody in the store?

A. No sir.

Mr. MOORE: We'll admit that Mr. Deville wrote that.

Mr. ULRICH: All right. There has been considerable testimony, for some reason, whether you, at the time that Mr. Deville and some pugnacious Army officer—what was his name?

Mr. Moore: What was that last remark, Mr. Reporter?

Mr. ULRICH: I described him as "pugnacious".

Mr. Moore: I'll ask that that be stricken, may it please the Court. [887]

Mr. ULRICH: All right. I thought he had a rather belligerent attitude; perhaps not; a square jawed fellow with a sort of a—I don't know how

(Testimony of Monty Roque.)

better to describe him; do you remember an Army officer coming in there one time with Deville?

A. Yes sir.

Q. Well, that officer took the stand and recited the list of things that you had given to him at the time, and there seemed to be some question as to whether you recited those off without referring to any other memoranda or record that you may have had. When they asked you what had been sent out on this bill and what had not been sent, how did you tell them?

A. I didn't tell them exactly, because I couldn't remember all; all what I told them is to show me the original bill which—are you referring to May——

Q. Wherever the pumpkin is.

Mr. MOORE: May 12th.

Mr. ULRICH: Was the Captain talking about the May 12th bill; what did he list that list from?

Mr. MOORE: May 12th.

Mr. ULRICH: Yes, I am referring to the May 12th bill. How did you tell him and explain to him——

A. I told him that if they could show me the original bill that I turned over to Mr. Lloyd then I could give him an idea of what we had changed.

Q. Well, did you perform the feat, that's what I want to know, of taking the bill without the changes, with nothing to indicate what the original articles had been, and from memory recite the list of goods? [888]

A. No, I never recited anything to him.

(Testimony of Monty Roque.)

Q. You checked it with the other bill, and from your records told him what the situation was, is that right?

A. Beg pardon?

Q. You checked the two bills, the Mothers' Day against the other bill, and from your records showed him where the changes had been made?

A. They hadn't come down with the bill; I couldn't check it then.

Q. How did you show him which were the ones that had not gone out with the original order?

A. I didn't show him anything at all; all I have shown him is this book and the copy of the invoice that was charged to the Camp.

Q. Here's the bill that came back from the Camp, the first bill that went out there?

A. Yes sir.

Q. Here's the bill with the lines on, as you've testified?

A. Yes sir.

Q. Here is the other bill that was made out after the change was made?

A. Yes sir.

Q. How did you show this Captain and Deville what the difference was?

A. I couldn't show them, because I didn't have this in my possession when he came to the store, Mr. Ulrich.

Q. Is this the bill that Mr. Lee Chong has said he brought back from the Camp with Cunningham's signature on it?

A. Yes sir.

(Testimony of Monty Roque.)

Q. Wasn't that available; didn't you have it around? [889]

A. Yes, but that has to be explained. Before Captain Deville had come to the store we have gone to Mr. Lloyd's office and I had this turned over to him to show him—

Q. In other words, this bill had been turned in?

A. Yes sir.

Q. And you told the Captain?

A. I told Captain Deville that I had turned over this bill to Mr. Lloyd, and that if he could turn it over I could help him.

Q. Did there come a time when you did tell him what the difference was?

A. They never come with it, so I couldn't tell him the idea.

Q. So there wasn't any time when you told to Captain Baldwin and Deville what the changes had been?

A. No, I couldn't give them any idea; I might have mentioned one article, maybe, but I told them I couldn't be sure, so to bring the original bill, then I could help them out.

Q. And you don't recall that being done?

A. No sir.

Mr. ULRICH: I think that's all.

Cross-Examination.

By WILLSON C. MOORE, Esq.

Q. In other words, Roque, you never at any time down at Lee Chong's store told Mr. Deville and

(Testimony of Monty Roque.)

Captain Baldwin that the items that were changed upon the May 12th bill were the 500 oysters, 2 cases apples, 400 pounds pumpkin, 400 pounds fresh spinach, 400 pounds white squash, and 40 pounds fresh lima beans, you never told Captain Baldwin, called these off in the presence of Captain Baldwin and Mr. Deville? [890]

A. I never did, sir.

Q. And that's just as true as anything else you've said on the stand?

A. Yes sir.

Q. Then I take it that this book that you've produced here this morning, running from April 7th to October 13th, is a listing by you of all the charges made against the Civilian Conservation Corps Camp, is that right?

A. That's right.

Q. And this Defendants' Exhibit 3, which is a separate and different book, is a listing by you of the totals by the month of the Civilian Conservation Camp bills?

A. Right.

Mr. MOORE: Are you offering this in evidence, Mr. Ulrich?

Mr. ULRICH: Yes. May that have a number at this time?

The COURT: It will be admitted. Please designate it, Mr. Clerk, as Defendants' Exhibit whatever would come in consecutive order.

(Marked—"Defendants' Exhibit 6")

(Testimony of Monty Roque.)

Q. Now, just to get the record straight; Mr. Roque, this book here which is Defendants' Exhibit 6 is a listing by you of the charges made against the Civilian Conservation Camp from April 7th to until October 13th of last year?

A. I'm not sure of the dates, but I know that's the book.

Q. Well, so we'll be sure about the dates, I want you to look at the dates. This first date here is April 7th?

A. Yes; that's my handwriting, sir.

Q. 1934?

A. Yes sir.

Q. And the date of the last entry is October 13th?

A. Right. [891]

Mr. MOORE: That's all.

Mr. ULRICH: That's all. I believe we're through, Your Honor. I'd like to have just about three minutes to confer with my associate here, and then I think we'll be ready.

(Recess—10:10 to 10:22 a. m.)

(Testimony of Lee Sau Chong.)

Mr. ULRICH: If Your Honor please, I am just going to call Mr. Lee Chong for one question.

LEE SAU CHONG

being recalled to the stand as a witness in his own behalf, testified further, as follows:

Direct Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Lee Chong, you heard the testimony a few moments ago of Doctor Enright to the effect that at one time he had a conversation with you in your store and that you agreed that he might have credit with you; and, more than that, that you said that something might be done so that he wouldn't have to pay for your goods, as I understand his testimony?

A. No sir.

Q. Do you remember seeing Mr. Enright in the store; did he come in?

A. Yes sir.

Q. Did you give him credit; did you say he could have credit?

A. He buy two times from the store.

Q. You said he could buy things there?

A. Yes sir.

Q. Did he buy things there?

A. Yes sir.

Q. Was anything said about his not paying for them, about [892] your giving them, or anything like that?

(Testimony of Lee Sau Chong.)

A. No, he got to pay for it; I didn't say "no pay for it".

Q. Could you think of anything he could have understood that way?

A. I think he made mistake.

Q. You think he must have made a mistake?

A. Yes sir.

Q. Did you have any intention of letting him have anything for nothing?

A. No, no intention giving him anything; I didn't tell him he could have anything without pay.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

Mr. ULRICH: Defendants rest.

Mr. MOORE: The United States rests.

The COURT: Let the record show that the testimony is closed. Now, gentlemen, we still have a little work left on our instructions. At what time would you suggest that this be determined, be concluded? There were some instructions to be rewritten by both parties when we had our last session.

(Discussion as to convenience of counsel.)

The COURT: Then we'll arrange to proceed with the instructions at 2:15. Now gentlemen of the jury, it's impossible or at least would not be fair to either counsel to ask them to commence the argument until the instructions are agreed upon, which means that we'll have to take up the argument in

this case tomorrow morning. The Court will not limit either counsel in their argument in reviewing the [893] evidence, but it will state to them at this time what an old minister at one time told me, that "Very few souls are saved after the first 20 minutes". The Court will now be at recess until 8:30 tomorrow morning. None of you were seriously inconvenienced by coming at 8:30 this morning, I take it. Then we'll begin at 8:30 tomorow morning in the hope of concluding this case tomorrow.

(Adjourned—10:27 a. m.) [894]

[Title of Court and Cause.]

The above entitled matter came duly on for the reading of instructions by the Court and argument by respective counsel immediately preceding final submission of the case to the jury, at 8:51 a. m. on Tuesday, May 28th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel,

WHEREUPON, the following proceedings were had:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll also so stipulate.

The COURT: Let the stipulation be entered.

Mr. MOORE: May we proceed to argue, may it please the Court?

The COURT: Just one moment. Now, gentlemen of the jury, you have listened patiently to this case for more than two weeks, and it is now the duty of the respective counsel to sum up the evidence and from the evidence argue what they contend from their respective sides of this case. [895] Now, it is just possible that one counsel will remember a certain bit of the evidence one way, and another a different way; that happens at different times in the course of a trial, and the Court may remember it one way or another; but it doesn't matter how the Court remembers it or how either counsel remembers it, it's a matter of how you remember it; and this case is almost in your hands now; and remember in these arguments neither Mr. Moore nor either of the counsel for the defendants are testifying, they are simply reviewing the evidence and arguing from that evidence as to what they believe to be the logical and correct conclusion. It's for you, from your memory of the evidence and using the judgment that God has given you, to determine; and I think it proper to call your attention to this now, so that you may have it in mind as respective counsel proceed, rather than at the close of the argument.

Mr. ULRICH: May I clarify my understanding at this time of the procedural rule to the effect that the opening argument on behalf of the prosecution includes all of the argument in chief, and rebuttal is confined entirely to rebutting the material urged by the defendants an behalf of the defendants?

Mr. MOORE: That's my understanding, may it please the Court.

Mr. ULRICH: I just want that understood.

The COURT: It's my understanding that that's the rule generally rather than absolutely. The opening argument should be so confined, and likewise the closing argument.

Mr. MOORE: (opening argument).

(Recess—10:22 to 10:35 a. m.)

Mr. ULRICH: (Argument). [896]

(Recess—11:53 a. m. to 12:02 p. m.)

Mr. MOORE: May it please the Court, at this time I would like to state that I don't see how I am going to be able to answer Mr. Ulrich's argument in less than 45 minutes, and with Your Honor giving the instructions I don't see how this jury is going to get out of here until some time after one o'clock; and I believe the jury should be allowed to state whether they had rather hear the rest of the argument and instructions now and go to lunch or to lunch now and here the balance after lunch.

Mr. ULRICH: May I just say this; I concluded my argument when I did on the assumption that the argument would be concluded at this time. There are a lot of things I would like to have argued if I thought there was going to be an adjournment and another session of court. I think we should continue, and if we don't continue I'd like to say a few further things to the jury.

Mr. MOORE: I have no objection to continuing.

The COURT: We will proceed, Mr. Moore.

Mr. MOORE: (argument in rebuttal).

The COURT: Gentlemen of the jury, if you had been at the Governor's dinner last night you probably wouldn't mind missing a lunch; you'd feel it would be good for you. Now, it would necessarily take the Court a considerable time to read these instructions, and this case has reached a stage now where you will no longer be permitted to separate until after you reach a verdict. At this time, Mr. Marshal, you may take the jury to lunch.

(Marshal and assistant sworn as bailiffs.)

The COURT: As soon as you've had your lunch, gentlemen, [897] you will return to the courtroom, and the Court will then instruct you and place the case in your hands.

(Recess—12:35 to 1:40 p. m.)

Mr. MOORE: Ready, stipulate the jury is present.

Mr. ULRICH: Ready for the defendants; I'll stipulate that the jury is present.

The COURT: Let the stipulation be entered. Mr. Clerk, will you file these, please (handing documents to Clerk). Gentlemen of the jury, it may avoid some confusion if the Court at this time makes a few remarks relative to these instructions that are about to be read to you. At different times in the progress of the trial you doubtless heard me speak to counsel about having a meeting for the purpose of settling instructions. I think I ought to explain to you what under our practice that means. It is the duty of the Court at this time to instruct you upon the law of this case. The way

these instructions are arrived at is about as follows: Attorneys for each side have a right to and usually do request that certain instructions be given to a jury. The attorneys and the Court meet together and go over these requested instructions, and out of the instructions requested usually some are given and some are refused. At other times it is found that each side will request instructions on practically the same thing. In such a case we usually select the instruction that is agreed upon to meet the conditions of the particular question the best; the other instruction is then withdrawn and the one agreed upon is given. After reading these instructions to you they will be handed to you to take to your jury room with [898] your deliberations; and you'll note that these instructions are not only numbered, but some of them are marked "Plaintiff's Instructions", and some are marked "Defendants' Instructions". Now, that "plaintiff's instruction" and "defendants' instruction" means simply this, that it was requested by the plaintiff or the defendants. But when this is given to you it is altogether by the Court, and because the given instruction has been requested by the plaintiff or requested by the defendants makes no difference, it is given to you and it is your duty as a jury to take it as the law of the case as the instruction of the Court; and these instructions are further numbered, and that is largely for the purpose of making up the record. The record that is made up here is made up to a considerable extent for the benefit of a review by a higher court if such review should be asked.

Instruction No. 1 (The Court reads).

Now, gentlemen of the jury, the Court will add orally that these facts are given to you for your information, to assist you in determining the interest or lack of interest of these several parties and the weight and credibility of their evidence, and are not to be considered by you in any light either favorably or unfavorably to the defendants now on trial; that is, the fact that one other defendant has pleaded guilty is not to be considered either as favorable or unfavorable to either of the two defendants now on trial, nor the fact that the defendant Miles is to have a separate trial, that fact is not to be considered either favorably or unfavorably to the two defendants or [899] either of them; but these facts are stated for your information for the purpose I have already stated, as will become more clear as we proceed with the instructions.

Instruction No. 2. (The Court reads).

Mr. McGHEE: The Defendants will note an exception to that instruction, Your Honor. The defendants note an exception to the giving of Plaintiff's Instruction No. 2.

The COURT: Let the exception be noted.

(The Court reads, in their order, instructions 3, 4, 5, 6, 7, and 8).

The defendant, in other words, gentlemen of the jury, stands just like the base runner in a ball game, and is to be given the benefit of every doubt.

(The Court reads instruction 9 and the first two paragraphs of instruction 10.)

In connection with the able arguments made by counsel in this case, each stated that in his zeal he might have gone further than he really intended or should have. I trust, in ruling upon the evidence and various matters that have come before the Court, I have said or done nothing that could in any way be construed as indicating an opinion of my own in regard to the guilt or innocence of these defendants, and if I have, you must absolutely disregard it, for it was not intended; and if I were to be substituted for you as a jury at this time I would have to start afresh on the evidence in order to determine what my verdict should be. So I couldn't express an opinion, for I have none, and properly should have none. In some jurisdictions, many jurisdictions, in fact, a court is not permitted to [900] comment in any way upon the evidence, and if it should it is generally reversible error on account of the prejudice that it would create. That is not true, as this states, in regard to United States district courts; but I have heretofore always refrained from commenting on the evidence, as I think the other is the better practice. And, unless for some very good reason I should change my mind, I think I can say safely at this time I never will. It would be an unwarranted invasion of what I think is the solemn and exclusive right of a jury.

(The Court reads remainder of instruction 10)

Instruction No. 11—11 doesn't seem to be here; I don't know what it is.

Mr. MOORE: It's out, Your Honor.

Instruction No. 12. (The Court reads)

(The Court reads instructions 13 and 14).

The COURT: These numbers are duplicates, because part of them were presented by one side and part by the other.

Next in order is Defendants' No. 1.

Mr. McGHEE: If the Court please, there may be some dispute about No. 11. What about that, Mr. Moore?

Mr. MOORE: If Your Honor will conclude the instructions, I think it's covered in the balance of them; if it isn't we'll notify you at the conclusion.

The COURT: It may be laying on my desk in chambers. Mr. Bailiff, will you go in and see if you can find an Instruction No. 11 laying on my desk?

(Bailiff complies)

The COURT: This is Defendants' Instruction No. 1. (Reads).

The COURT: I'll now read you No. 11—— [901]

Mr. MOORE: No, may it please the Court, that's the one that's refused. That, you will note, has been refused, and this one marked "11-A".

The COURT: (Reading): "You are instructed that in this case two of the defendants now on trial have testified in their own behalf. This is a right conferred upon them by the law. The fact that they are defendants may be considered by you as bearing upon their interest in the result of the case, in connection with determining the weight and credibility to be given to their testimony, but apart from such consideration the testimony of such defendants is to be treated the same as the testimony of other witnesses."

Instruction No. 3 (The Court reads).

The COURT: No. 4 was refused. (Reads Instruction No. 5)

(The Court reads Instructions No. 6, 7, 8)

The COURT: No. 9 was refused.

Mr. MOORE: Yes, Your Honor.

(The Court reads Instruction No. 10)

The COURT: No. 11: "You are further instructed"——

Mr. MOORE: That's been withdrawn, Your Honor.

(The Court reads Instruction No. 12)

The COURT: No. 15 is the next one that will be given.

(The Court reads Instruction No. 15).

(The Court reads Instructions No. 16, 17, 18, 19)

The COURT: Gentlemen of the jury, you will note that in several instances these instructions are more or less similar; there's a slight shade of difference in meaning in almost all of them. We have tried very hard not to [902] have any conflicting instructions go in, and some I'll have to take in just as they are.

Mr. McGHEE: If the Court please, the defendants now take exception to the giving over the objections of the defendants of the Government's Instructions numbered 2, 4, 5, 9, 10, and 14.

The COURT: 2, 4, 5, 9, and 14?

Mr. McGHEE: 2, 4, 5, 9, 10, and 14. Defendants further except to the refusal of the Court to give Defendants' Requested Instructions numbered 4, 9, 13, and 14.

The COURT: Let these exceptions be duly noted.

Now, gentlemen of the jury, just one word more. You have before you eight problems, for as to each of these two defendants you must find four things; you must find Lee Chong either guilty or not guilty of each of the two counts; you must find the defendant Mookini guilty or not guilty of each of the two counts. And there will be handed you with the instructions a form of verdict covering what I have just stated, with a blank line in which, after you have reached an agreement on any of these points, you will either write "guilty" or "not guilty" in the proper place. I am sure you'll find no trouble with the form of the verdict; and when you have agreed upon all these points you will return in to Court with your verdict. You will now retire with the Bailiff to the jury room. Is there anything further you wish to offer, from either counsel?

Mr. ULRICH: Nothing further, Your Honor.

The COURT: You are entitled to the exhibits as well as the instructions, gentlemen of the jury. Swear the Bailiff. (Marshal and assistant sworn as bailiffs—2:17 pm) [903]

(At 6:00 p. m. the jury were taken to dinner by the bailiffs, returning in about one hour to continue deliberating. At 9:57 p. m. the Foreman of the jury appeared in the courtroom, and the following proceedings were had):

FOREMAN: We have arrived at a verdict on 3 of the counts, and we're now threshing out the 4th count.

The COURT: Would you prefer to continue that, or would you like to go to bed?

FOREMAN: Judge, it's a matter that's immaterial to me; I'd prefer to continue, then we can, I think in a matter of 15 or 20 minutes we can conclude it.

The COURT: I think we would all prefer to have it concluded; you may so report to the jury.

FOREMAN: Judge, may I ask a question?

The COURT: Certainly.

FOREMAN: If the jury have agreed by a unanimous vote on one count, have they a right to change their vote if one of them disagrees after he has agreed on it? For instance, 11 of us have agreed on one of these counts; supposing one of these jurors says "I want to change my vote on that" after he has already given it and got me to write in the word "guilty" in the form of verdict?

The COURT: I don't know that I have ever heard that question, but I don't hesitate to answer it, but I believe he could change——

FOREMAN: You believe he could change his mind?

The COURT: Yes; it wouldn't show an "abiding conviction".

FOREMAN: I'll endeavor to get them together as quickly as possible on that list. [904]

The COURT: Yes, do so, Mr. Foreman, please. The Court will be at recess until we hear from the jury, 10:15 p. m. (The jury return to the courtroom)

The COURT: Gentlemen of the jury, have you reached a verdict?

FOREMAN: We have.

The COURT: You may hand it to the Clerk, please, Mr. Foreman.

(Foreman of Jury hands document to Clerk, who shows it to the Court, the Court returns document to Clerk)

The COURT: Mr. Clerk, you will read the verdict.

CLERK: Defendants rise, please. (Defendants comply).

Omitting the title, court, and cause, the verdict:

"We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find as follows:

ROBERT K. MOOKINI, of Count One—Guilty

Of Count Two—Not guilty

LEE SAU CHONG—Of Count One—Guilty

Of Count Two—Guilty

of the Indictment heretofore filed herein.

Dated—Honolulu, T. H., May (blank), 1935.

(Signed) WILLIAM W. JEFFERSON,
Foreman."

Mr. MOORE: I don't think there's any objection to putting "May 28" in the verdict, Mr. Ulrich?

Mr. ULRICH: No.

The COURT: The Clerk will supply the date. Gentlemen of the jury, is this your verdict?

JURORS: Yes sir.

The COURT: So say you all?

JURORS: Yes sir. [905]

Mr. ULRICH: On behalf of the defendants, if Your Honor please, I except to the verdict as rendered against each defendant as contrary to the law and the evidence and the weight of the evidence, and give notice of motion for a new trial.

The COURT: Let the exceptions and notice be entered. Mr. Clerk, you will see that this verdict is duly filed and recorded.

Mr. MOORE: At this time the United States Attorney's office wishes to thank this jury for their earnest consideration of this case, and also wants to congratulate Mr. Ulrich upon putting up a vigorous and clean defense in this case.

The COURT: And the Court will add, it has been a pleasure to try this case for the reason that it was tried on both sides as it should be by attorneys of experience and training, and the jury were most attentive through a very long, trying ordeal. You should have the thanks not only of the Court but of your community for rendering such service.

I HEREBY CERTIFY the foregoing to be a full and accurate transcript of my shorthand notes taken in the above entitled cause.

Official Court Reporter.

[906]

[Title of Court and Cause.]

TRANSCRIPT OF PROCEEDINGS OF HEARING ON MOTION FOR A NEW TRIAL AS TO THE DEFENDANTS ROBERT K. MOOKINI AND LEE SAU CHONG.

The above entitled matter came duly on for hearing before the HONORABLE S. C. HUBER, Judge of the aforesaid Court, on Friday, June 14, 1935, at 11 o'clock a. m., whereupon the following proceedings were had:

W. C. MOORE, Esq., Assistant United States Attorney, appearing for the government, and

BARRY S. ULRICH, Esq., appearing as attorney for the defendants.

Mr. ULRICH: If the Court please, I will substitute at this time as best I can, for Mr. McGhee, from whom I expect to have further affidavits and further things to complete the matter before the matter is finally completed. I do not wish to delay more than necessary and will proceed with an argument at this time, with the understanding that I may complete the record, if Your Honor [908] will permit me so to do, before the ruling of the Court be definitely made.

Mr. MOORE: If any affidavits are to be filed, we ask that the United States be granted leave to file any counter-affidavits that may be deemed necessary.

The COURT: That will be quite proper.

(Mr. Ulrich argues motion for a new trial.)

Mr. ULRICH: In my affidavit, and I want to say at the outset I hope that I have accurately

stated what Your Honor has said to me,—I hope that the Court will correct my affidavit in any regard by any statement that the Court may feel it would like to make.

The COURT: I have read the affidavit, and as I remember it it is substantially correct.

(Mr. Ulrich continues with his argument.)

(Argument by Mr. Moore.)

(Argument by Mr. Ulrich.)

Mr. ULRICH: I would like to have an opportunity to file these further affidavits and also a brief memorandum, if Your Honor will care to have it.

The COURT: It is always unsatisfactory to hear these matters piecemeal, but we are in that situation in this particular case, and I do not wish to rule on it piecemeal; I will wait until the argument is concluded before passing on it, except in fairness I would say this, that after I knew this matter was being tried out and a motion was filed I made some independent investigation of my own and found cases very directly on it, both by the Supreme Court of the United States and the Circuit Court of Appeals [909] of the 9th Circuit, bearing on this very question, and I feel that I would be bound by their holding.

(Discussion.)

The COURT: This hearing will be adjourned until 10 o'clock Tuesday morning, at which time it is hoped it may be concluded.

(Hearing further adjourned until Wednesday, June 19, 1935, at 3:03 p. m.) [910]

Wednesday, June 19, 1935, 3:00 o'clock p. m.

The within entitled matter came duly on for further hearing on motion for a new trial as to the defendants Robert K. Mookini and Lee Sau Chong at 3 o'clock p. m. on Wednesday, June 19, 1935, before the HONORABLE S. C. HUBER, Judge presiding, all parties being present as at the last hearing, and in addition Earl McGhee, Esq., on behalf of the defendants, whereupon the following proceedings were had:

The COURT: This is a continuation of the hearing on motion for new trial.

Mr. ULRICH: At this time, if the Court please, I should like to file in support of the motions of Mookini and Lee Chong, severally, the affidavits of Mr. McGhee, to be filed in this Court, if Your Honor please.

Mr. MOORE: For the purposes of the record, may it please the Court, we object to the filing of the affidavits on two grounds: First, that they were not filed within the ten day period, and, second, that in so far as the affidavits relate to having an effect on the jurors in arriving at their verdict, it is on information and belief, and not direct, that there is the statement in the affidavit that it was "information and belief" at the time the note was sent by Your Honor.

(Mr. Moore reads from affidavit.)

If you will recall, Your Honor, that information was sent up during the afternoon while I was

in another Court and the jury did not return a verdict until about 9, as [911] I recall, or after 9 o'clock, which is at least six hours, this says "within an hour."

(Argument)

Mr. ULRICH: So far as there being any inaccuracy of a statement of fact, of course that can be cured by a counter-showing; if they are not accurate statements they should be corrected.

(Argument by Mr. Moore and Mr. Ulrich.)

The COURT: The affidavit is certainly something that the defendant would be entitled to have a record made of, so that if any error is committed in regard to it it could be properly reviewed.

(Mr. Ulrich reads affidavit to the Court.)

The COURT: Is this affidavit really intended to be considered as part of the motion?

Mr. ULRICH: Yes, Your Honor, in support of that motion, filed in support of it as one other affidavit has been filed.

The COURT: You may proceed with the argument.

(Argument by Mr. Ulrich.)

Mr. MOORE: May it please the Court, I will ask your Honor if I am not correct when I state that the information sought was how many enlisted men were at this camp; the average amount of enlisted men?

The COURT: Yes, covering either three or four months.

Mr. MOORE: In other words, what was asked was, what was the amount of enlisted men during

that period of time; nothing said as to any particular dinner? [912]

The COURT: No, nothing whatever.

Mr. MOORE: And the answer sent by your Honor, the Judge, was "From 180 to 200".

The COURT: That is correct.

Mr. MOORE: And there was nothing said as to any particular dinner at all.

The COURT: The Court's recollection is it was for the months of April, May and June; it may have been March, April and May; it was one or the other.

Mr. MOORE: And your message was sent, I understand, sometime during the afternoon, before four o'clock?

The COURT: I know it was during the afternoon; I believe it was before four o'clock.

Mr. MOORE: Of the day the case was argued.

The COURT: That is correct.

(Argument by the attorney for the government, Mr. Moore.)

(Argument by Mr. Ulrich.)

Mr. MOORE: If they are going to stand on that affidavit I will ask leave to file a similar affidavit on information and belief and setting forth the names of jurors that I have talked to and will present it to the Court by noon tomorrow morning.

The COURT: The affidavits of ten jurors that they had not been influenced would be more than counterbalanced by one or two jurors who said they

had been influenced, in the opinion of the Court. Such an affidavit would be entirely negative in character, and of no value, [913] and besides the Court will cite, in ruling upon this case, that the Supreme Court has taken exactly the same view in regard to affidavits supporting a verdict that they do in regard to affidavits tending to impeach a person.

Now nothing has been said in this argument about any of the grounds for a new trial except this one, which is Number 14 in the Lee Chong motion, and Number 12 in the Mookini motion——

Mr. ULRICH: The Court does not understand that we are waiving those grounds? I think I definitely stated to the Court that I would not make an argument on those grounds, but we did reserve the grounds and said we would submit them to the Court without argument, because most of the points had already been argued.

The COURT: So far as the motion for a new trial is based upon the overruling of the demurrer, the motion for a new trial is overruled.

There is also a ground in here to the effect that the defendants were charged with two crimes when only one could properly be considered. That is sufficiently answered by revised statute 1024, which expressly makes provision for just that very thing, and that ground is overruled.

The next ground is the one that has been argued. Omitting the first part of it, it proceeds to say: "did make and send a certain statement of fact to said

jury as to the number of men enrolled at the C. C. C. Camp, which fact as so stated did not appear in the evidence in [914] the case and was based upon in- of the record of said case".

As to that the Court will now say that Major Mahaffey, Captain Baldwin, Captain Miles and possibly director Lloyd gave evidence of fact from which the statement by the Court can easily be verified. In addition to that Exhibit "L" actually contains the information, and that was with the jury at the time. After this motion was filed the Court examined Exhibit "L" and finds that it states for the month of April there were 5681 man days, and if you will divide that by thirty you will find the average to be 189; for May it gives 5877 man days, so dividing that by thirty gives 195; for June 5671, which divided by thirty gives 185, all of which verifies the correctness of the statement made. Instead of the statement of fact being in conflict with, it is entirely supported by the evidence in the case. Nor has there been anything brought to the attention of the Court from which it would conclude that the information given affected the defendants adversely rather than favorably, except the mere fact that a jury returned a verdict that was adverse to the defendant.

There is nothing that the Court can see at this time that would be prejudicial, in view of the fact that it was just as apt to be favorable as unfavorable, in the opinion of the Court. [915]

The Court will now call attention to the case of Charlton v. Kelly, 156 Fed., 433, an opinion by the 9th Circuit Court of Appeals, in which, among other things, the Court says:

"There is evidence from affidavits of the jurors that the marshal remarked to the jury that the case was an important one, that it was on trial for a second time, and that they ought to be able to argee. The jury at that time stood evenly divided. They were thereafter brought into court and further instructed, and again retired and agreed upon a verdict for the defendant in error. The remarks of the marshal to the jury were set forth in affidavits and were presented to the Court on a motion for new trial. The motion was overruled, and judgment entered for the defendant in error."

The opinion further states: "What is the matter with you that you can't agree in this case?" as a remark which the marshal made. "This is a very important case, and this is the second time it has been tried. You ought to be able to come to some agreement some way."

Now the Court in passing upon that said: "There is nothing in the affidavits to show that any of the jurors was influenced by these remarks, and there is nothing in the language shown calculated to influence the jury for one or the other of the parties. While such remarks by an officer of the court to a jury are prohibited by law, and should be discountenanced, they are not [916] necessarily ground

for a new trial, and they are certainly not ground for the reversal of a judgment in an appellate court after the trial court has passed upon their force and effect on a motion for a new trial."

Now the Supreme Court of the United States has passed upon the same thing in the case of United States v. Reid, 12 Howard, 361, 13 L. Ed. 1023, in these words:

"Without laying down any general rule, how far the affidavits of jurors impeaching their verdict ought to be received, it is decided that the affidavits of two jurors, stating that, whilst impaneled, they read a newspaper report of the preceding evidence, but which had no influence upon their verdict, were not sufficient ground for a new trial.

* * * he offered in evidence the voluntary affidavits of the two jurors, one of whom deposed 'that, while the case was on trial, and the jury were impaneled, a newspaper was sent to him by some of his family from his counting room. It was a newspaper for which he was a subscriber, which was regularly left at his counting house and which he was accustomed to read. He looked slightly over it and saw that it contained a report of the evidence which had been given in the case under trial, a part of which he read and put the paper in his pocket; that, while the jury were in their room deliberating on their verdict, he read over the report of the evidence in the newspaper; he read it from curiosity, and thought it correct, and that it refreshed [917] his memory;

but it had no influence on his verdict, and that he had made up his mind before he read it. There was no conversation about the newspaper report in the jury room, nor did he speak of it there to any one, nor does he know that the other jurors knew that the report of the evidence was in the newspaper they saw him reading.' "

The Court says, in passing upon that:

"It would perhaps hardly be safe to lay down any general rule upon this subject. Unquestionably such evidence ought always to be received with great caution. But cases might arise in which it would be impossible to refuse them without violating the plainest principle of justice. It is, however, unnecessary to lay down any rule in this case, or examine the decisions referred to in the argument. Because we are of opinion that the facts proved by the jurors, if proved by unquestioned testimony, would be no ground for a new trial. There was nothing in the newspapers calculated to influence their decision, and both of them swear that these papers had not the slightest influence on their verdict.

That the facts stated in the affidavits of the jurors do not entitle the prisoner to a new trial."

There is one other case, and if I can find it here I would like to read it: You will recall in the Reid case, read a moment ago, the Supreme Court said it would not pass upon the question of whether jurors by affidavits could impeach their verdict. Since then the [918] Supreme Court has directly passed on that point.

In the case of McDonald vs. Pless, 59 Law Edition, 1300, at page 1302, also found in 238 U. S., at 264, the Court says: "But though revised statutes, section 914, does not make the North Carolina decisions controlling in the Federal court held in that state, we recognize the same public policy which has been declared by that court, by those in England, and most of the American states. For while by statute in a few jurisdictions, and by decisions in others, the affidavit of a juror may be received to prove the misconduct of himself and his fellows, the weight of authority is that a juror cannot impeach his own verdict."

Now if a juror cannot impeach his own verdict, certainly the attorney cannot.

The Court further says: "The rule is based upon controlling considerations of a public policy which in these cases chooses the lesser of two evils. When the affidavit of a juror, as to the misconduct of himself or the other members of the jury, is made the basis of a motion for a new trial, the Court must choose between redressing the injury of the private litigant and inflicting the public injury which would result if jurors were permitted to testify as to what had happened in the jury room."

"These two conflicting considerations are illustrated in the present case. If the facts were as stated in the affidavit, the jury adopted an arbitrary and unjust [919] method in arriving at their verdict, and the defendant ought to have had relief, if the facts could have been proved by witnesses who were

competent to testify in a proceeding to set aside the verdict. But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the findings. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation; to the destruction of all frankness and freedom of discussion and conference."

This decision was handed down long after the decision in the Reid case, and, as it states, follows the courts of England and practically all the courts of the United States.

In another case I examined the man was charged with murder and there was some misconduct,—I have forgotten just exactly what it was that was complained of in that case; I believe the marshal or bailiff entered the jury room and told them they ought to convict this man, that this was the third murder he had committed, [920] and other things, and the Court refused the matter to be shown by affidavit or deposition for the reasons stated here, that it was against public policy and would result in greater harm and injury than could possibly result otherwise.

Now if the affidavit of a juror himself could not be received, much less could the affidavit of the attorney, based on information and belief. The motion of the defendants for a new trial is overruled.

Mr. ULRICH: On behalf of the defendants Mookini and Lee Chong I except at this time to your Honor's ruling overruling the motion and denying the motion for a new trial as presented by each defendant.

The COURT: Let the exceptions be noted and granted.

Mr. ULRICH: It may be understood the exceptions are made separately on behalf of each defendant.

The COURT: It is so understood.

Mr. MOORE: How about sentence at this time.

Mr. ULRICH: I haven't given that particular thought yet. I would like to have that put over and ask that the matter of sentence be set over until 9 o'clock Saturday morning.

The COURT: That will be satisfactory. The Court would like to give that matter some more thought himself. The matter will be taken up at 9 o'clock next Saturday morning.

(Adjourned to 9 o'clock a. m. Saturday, June 15, 1935, for sentence.) [921]

I HEREBY CERTIFY the foregoing, pages 1 to 14, inclusive, to be a full, true and correct

transcript of my shorthand notes taken in the within entitled matter.

Honolulu, T. H.
September 23, 1935.

(s) R. N. LINN
Official court reporter (pro tem)

[922]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD ON APPEAL.

The United States of America,
Territory of Hawaii—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 922 inclusive, in four volumes, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office and I further certify that I am attaching hereto the original citation on appeal and that the costs of the foregoing transcript of record on appeal are $68.05 and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court this 16th day of April, A. D. 1936.

[Seal] WM. F. THOMPSON, JR.,
Clerk, U. S. District Court, Territory of Hawaii.

[Endorsed]: Filed April 16, 1936. [923]

[Endorsed]: No. 8183. United States Circuit Court of Appeals for the Ninth Circuit. Robert K. Mookini and Lee Sau Chong, Appellants, vs. United States of America, Appellee. Transcript of Record. In Four Volumes. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed April 28, 1936.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 8183

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

ROBERT K. MOOKINI, and LEE SAU CHONG,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Upon Appeal from the District Court of the United States for the Territory of Hawaii.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

[Title of Court and Cause.]

OPINION.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Before: WILBUR, GARRECHT and MATHEWS, Circuit Judges.

MATHEWS, Circuit Judge:

In the United States District Court for the Territory of Hawaii, appellants, Robert K. Mookini and Lee Sau Chong, were jointly indicted and tried for violating § 35 of the Criminal Code, 40 Stat. 1015, 48 Stat. 996 (18 U.S.C.A. § 80).[1] The indictment was in two counts, charging similar offenses alleged to have been committed on June 7, 1934, and September 7, 1934, respectively. Mookini was found guilty on the first count and not guilty on the second. Lee Sau Chong was found guilty on both counts. Motions for a new trial were denied and appellants were sentenced. This appeal followed.

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[1]Section 35: "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both . . ."

The verdict in this case was rendered on May 28, 1935. The motions for a new trial were filed on June 7, 1935, and were denied on June 19, 1935. Judgment was entered on June 29, 1935. This appeal was applied for by petition filed September 27, 1935, and was on that date allowed by the trial court. It was not taken in the manner or within the time specified in Rule III of the "Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilt, in criminal cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia," prescribed by the Supreme Court of the United States on May 7, 1934 (28 U.S.C.A. § 723a). Rule III provides:

> "An appeal shall be taken within five (5) days after entry of judgment of conviction, except that where a motion for a new trial has been made within the time specified in subdivision (2) of Rule II, the appeal may be taken within five (5) days after entry of the order denying the motion.
>
> "Petitions for allowance of appeal, and citations, in cases governed by these rules are abolished.
>
> "Appeals shall be taken by filing with the clerk of the trial court a notice, in duplicate, stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and

appellant's attorney, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and, if the appellant is in custody, the prison where appellant is confined. The notice shall also contain a succinct statement of the grounds of appeal and shall follow substantially the form hereto annexed."

Are these rules applicable to criminal cases in the United States District Court for the Territory of Hawaii? They were prescribed under and pursuant to the Act of February 24, 1933, c. 119, 47 Stat. 904, as amended by the Act of March 8, 1934, c. 49, 48 Stat. 399 (28 U.S.C.A. § 723a). Section 1 of the Act, as amended, provides:

"That the Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, in the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States. . . ."

The Supreme Court's order of May 7, 1934, reads as follows:

"It is ordered on this seventh day of May, 1934, that the following rules be adopted as the Rules of Practice and Procedure in all proceedings after plea of guilty, verdict of guilt by a jury or finding of guilty by the trial court where a jury is waived, in criminal cases in the District Courts of the United States and in the Supreme Court of the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.

"It is further ordered that these rules shall be applicable to proceedings in all cases in which a plea of guilty shall be entered or a verdict or finding of guilt shall be rendered, on or after the first day of September, 1934."

Comparing the Act with the order, it will be observed that, instead of referring, as the Act does, to "district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands," the order refers only to "District Courts of the United States." The United States District Court for the Territory of Hawaii may not, for all purposes, be considered a district court of the United States, but it has the jurisdiction of a district court of the United States and is by law required to proceed in the same manner as a district court of the United States, and appeals from that court to this court are required to be taken in the same manner as

appeals from district courts of the United States. See § 86 of the Hawaiian Organic Act (42 Stat. 119, 43 Stat. 890) and §§ 641, 642 and 645 of Title 48, U.S.C.A., derived therefrom.[2]

Necessarily, therefore, when the Supreme Court prescribes rules governing practice and procedure after plea of guilty, verdict or finding of guilt in criminal cases in district courts of the United States, such rules must and do govern such practice and procedure in the United States District Court for the Territory of Hawaii. The rules so prescribed on May 7, 1934, were applicable to this case. The time within which appellants might have taken a valid appeal expired on July 6, 1935. This appeal, which they attempted to take on September 27, 1935, must be dismissed. O'Gwin v. United States (C.C.A. 9), ... F.(2d) ....., decided June 7, 1937; Burr v.

---

[2]Sections 641, 642 and 645:

"§641. District court; sessions; powers; terms. There shall be established in the Territory of Hawaii a district court, to consist of two judges, who shall reside therein and be called district judges. . . .

"§642. Jurisdiction of district court; authority of officers. The said court shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court; and the said judges . . . shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges . . . of district courts of the United States."

"§645. Appeals. Appeals from the said district court shall be had and allowed to the circuit court of appeals for the ninth judicial circuit in the same manner as appeals are allowed from district courts to circuit courts of appeal as provided by law. . . ."

United States (C.C.A. 7), 86 F.(2d) 502, 503. See, also, Fewox v. United States (C.C.A. 5), 77 F.(2d) 699.

Appeal dismissed.

[Endorsed]: Opinion. Filed Jul. 26, 1937. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 8183.

ROBERT K. MOOKINI, and LEE SAU CHONG,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

JUDGMENT.

Upon Appeal from the District Court of the United States for the Territory of Hawaii.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Territory of Hawaii and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the appeal in this Cause be, and hereby is dismissed.

[Endorsed]: Filed and entered. Jul. 26, 1937. Paul O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of O. P. Soares, Esq., counsel for the appellants, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including August 25, 1937; and in the event the petition for a writ of certiorari to be made by the appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT,
United States Circuit Judge.

Dated: San Francisco, California, August 2, 1937.

[Endorsed]: Filed Aug. 2, 1937. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing fifteen hundred and twenty-two (1522) pages, numbered from and including 1 to and including 1522, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of August, A. D. 1937.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 1024] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S
FILED
AUG 16 1937
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI and LEE SAU CHONG,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No.....

ROBERT K. MOOKINI and LEE SAU CHONG,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the United States:

Your petitioners respectfully show:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The United States Circuit Court of Appeals for the Ninth Circuit dismissed petitioner's appeal, holding

that Rules of Practise and Procedure in all proceedings after plea of guilty, verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, in criminal cases in the District Courts of the United States and in the Supreme Court of the District of Columbia and in all subsequent proceedings in such cases in the United States Circuit Court of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States, promulgated by this Court May 7, 1934, and specifically Rule III. thereof, are applicable to the district court in the Territory of Hawaii and that therefore, the appeal was not taken in time. The appeal being thus summarily dismissed, the case was not reviewed.

The pertinent facts of the case are that petitioners were jointly indicted on two counts of violating section 35 of the Criminal Code (18 U. S. C. A., sec. 80) and were tried in the court provision for which is made in the Organic Act of the Territory of Hawaii (28 U. S. C. A., sec. 641) therein denominated " a district court," which court is not to be confused with District Courts of the United States, the latter being provided for by Chapter 2, Title 28 of the United States Code, and the judicial districts in which District Courts of the United States are established being set out in Chapter 5, Title 28, of the United States Code.

A jury found petitioner Mookini guilty on one count of the indictment and not guilty on the other, and the petitioner Lee Sau Chong guilty on both counts.

Admittedly, if the rules of this Court promulgated May 7, 1934 are limited to the District Courts of the United States and the other Courts therein enumerated and do not extend to the United States Court in the Territory of Hawaii, the appeal should not have been dismissed.

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

In this case, the United States Circuit Court of Appeals for the Ninth Circuit has decided an important question of federal law, which has not been, but should be, settled by the Supreme Court of the United States.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court had in the case numbered and entitled on its docket No. 8183, Robert K. Mookini and Lee Sau Chong, appellants, v. United States of America, appellee, to the end that the cause may be reviewed and determined by this Court and that the judgment herein of said Court be reversed by this Court, and for such other and further relief as to this Court may seem proper.

Dated at Honolulu, Hawaii, August 10, 1937.

O. P. SOARES,
Counsel for Petitioners.

In the Supreme Court of the United States

OCTOBER TERM, 1937.

No.....

ROBERT K. MOOKINI and LEE SAU CHONG,
Petitioners

vs.

UNITED STATES OF AMERICA,
Respondent.

Brief in Support of Petition for Writ of Certiorari

I.

OPINIONS OF COURTS BELOW.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit at the moment of writing this Brief has not been reported but is to be found on page 1016 of the record.

The case in the trial court was unreported.

II.

JURISDICTION.

It is believed and urged that the jurisdiction of this Court is sustained by Judicial Code, section 240 as amended (28 U. S. C. A., sec. 347).

III.

STATEMENT OF THE CASE.

Robert K. Mookini and Lee Sau Chong, appellants herein, together with William E. Miles and John E. Cunningham were jointly indicted by a grand jury on March 19, 1935, for violations of Section 80, Title 18, United States Code (section 35, C. C.), the indictment being in two counts.

COUNT I, charges all four defendants with making and causing to be presented to the camp director of the Civilian Conservation Corps, Schofield Camp, Hawaii, a fraudulent claim and voucher, on which appeared certain items of shell fish, fruit, and vegetables which were not delivered but for which payment was claimed. The evidence shows, however, that payment was never in fact made.

COUNT II, relates to a date and to items different from those set out in Count I (R. pp. 5, 11).

Defendant Mookini filed a demurrer on twenty-six grounds (R. p. 12) and defendant Lee Sau Chong filed a demurrer on nineteen grounds (R. p. 20).

Both demurrers were overruled. Defendant Lee Sau Chong filed a motion for severance (R. p. 35) which motion was overruled.

The case proceeded to trial. In due course Mookini was found guilty on the first count and not guilty on the second count and Lee Sau Chong was found guilty on both counts.

Thereafter, an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit, and after briefs filed and oral argument, that court dismissed the appeal on the ground that the same had not been taken in accordance with certain rules promulgated by this Court on May 7, 1934.

IV.

SPECIFICATION OF ERRORS.

1. The said Circuit Court of Appeals erred in holding that the Rules of Practise and Procedure after plea of guilty, verdict of guilt by a jury, or finding of guilt by the trial court where a jury is waived, in criminal cases in the District Courts of the United States and in the Supreme Court of the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Court of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States promulated by this Court May 7, 1934, and specifically Rule III, of those rules are applicable to

the district court in the Territory of Hawaii (R. p. 1016).

2. The trial court erred in overruling the demurrers to the indictment, particularly grounds 5, 12, 13, 14 and 17 thereof (R. pp. 143, 144, and 145) which read as follows:

> "5. That it does not appear from the allegations of said count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment (R. p. 143).
>
> "12. That said count of said indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said indictment set forth. (R. p. 144).
>
> "13. That said count of said indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said count that said goods were not delivered to some other proper and suitable place for delivery. (R. p. 145.)

"14. That it does not appear from the allegations of said count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it affirmatively appearing that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery, said count failing to indicate that such proper delivery was not made.

"15. That the allegations of said count fail to state facts showing the commission of a crime by this defendant.

"16. That the allegations of said count fail to show violation of the provisions of Section 80, Title 18, United States Code. (Section 35, C. C.)

"17. That said count of said indictment fails completely to state facts from which this defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof."

3. The trial court erred in overruling the motion of defendant Lee Sau Chong that his cause as a defendant in said action be severed for the purpose of trial from the causes of the other defendants (R. p. 117).

4. The trial court erred in giving information to, and communicating with, the jury as to facts or evidence relating to said cause while said jury was deliberating on its verdict in said cause, such information being given and communication had while the defendants Robert K. Mookini and Lee Sau Chong

were not personally present and in the absence of their counsel and without notice to them and outside of the court room.

V.

ARGUMENT.

SUMMARY OF THE ARGUMENT.

POINT 1. The Rules of Practise and Procedure after conviction in criminal cases promulgated by this Court are applicable to District Courts of the United States only and not to the district court established in the Territory of Hawaii by sections 641 and 642 of Title 48, U. S. C. A.

There is a marked and clearly drawn distinction between District Courts of the United States and the district court established in the Territory of Hawaii by Sections 641 and 642 of Title 48, U. S. C. A.

In promulgating the aforesaid Rules of Practise and Procedure, this Court intended that they should not apply to the district court established in the Territory of Hawaii by Sections 641 and 642 of Title 48, U. S. C. A.

POINT 2. The indictment upon which defendants were forced to go to trial did not set out all the material facts and circumstances embraced in the definition of the offense sought to be charged; it omitted material language of the statute nor did it supply the lack with other language.

POINT 3. The trial court having granted the defendant Miles a separate trial should have severed the causes as against Mookini and Lee Sau Chong. By refusing to do so, the court made it appear to the jury that Mookini and Lee Sau Chong must have been acting together.

POINT 4. The communication with the jury by the trial judge while the jury was deliberating on its verdict consisted of a statement made by him based on his recollection of the evidence although there was documentary evidence on the subject; was not warranted by the evidence; was in the absence of the defendants and their respective counsel; and was not in the court room.

POINT 1.

It is clear from the language employed therein, that the Rules of Practise and Procedure after conviction in all proceedings after plea of guilty, verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, promulgated by this court on May 7, 1934 are limited to criminal cases in the District Courts of the United States and in the Supreme Court of the District of Columbia and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.

The Congress of the United States by the Act of February 24, 1933, C. 119, 47 Stat. 904 as amended by

the Act of March 8, 1934, C. 49, 48, Stat. 399 (23 U. S. C. A., sec. 723a) gave this Court power to prescribe rules of this nature in criminal cases in district courts of the United States and of Alaska and of Hawaii and of Puerto Rico and of the Canal Zone and of the Virgin Islands, as also in the Supreme Courts of the District of Columbia and of Hawaii and of Puerto Rico, and in the United States Court for China, and in all United States Courts of Appeals and in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.

In promulgating these rules this Court limited them to the District Courts of the United States, the Supreme Court of the District of Columbia, the United States Circuit Courts of Appeals, the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States; and has thus far promulgated no new rules for criminal cases in the district courts of Alaska, of Hawaii, of Puerto Rico, of Canal Zone, or of the Virgin Islands; the Supreme Courts of Hawaii and of Puerto Rico; and the United States Court for China.

The Territory of Hawaii has never been marked off into judicial districts or into one judicial district.

The Judicial Code of the United States provides no district court for the Territory of Hawaii.

As originally created, the United States court for Hawaii, like the United States court for China had a greater jurisdiction than District Courts of the United States. The court in which the trial of this

case was had was brought into existence by the Act of April 30, 1900, 31 Stats, at L. 141, c. 339. The provision for jurisdiction of this court was made in this language: "Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court of the United States and shall proceed therein in the same manner as a circuit court and said judge * * * shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges * * * of district and circuit courts of the United States" (sec. 86).

The court in which this case originated and was tried can hardly be said to be a District Court of the United States when, as is the case, only persons who are "citizens of the Territory of Hawaii and have resided therein for three years next preceding their appointment" are eligible for appointment to that bench (48 U. S. C. A., sec. 643).

POINT 2.

In the case of *U. S. v. Christopherson et al.*, 261 Fed. 226, defendants were indicted on five counts under the same statute as that under consideration on the appeal. The defendants therein demurred to the indictment, which read as follows:

> "That on or about the 31st day of December, 1917, one Louis Christopherson and Charles J. Bauer, who were then and at all times hereinafter mentioned the president and secretary respectively of the St. Louis Coffee & Spice Mills,

a corporation duly organized and existing under the laws of the state of Missouri, with its chief office and place of business in the city of St. Louis, Missouri, and in the division and district aforesaid, and within the jurisdiction of the court aforesaid, did unlawfully, knowingly, wilfully, and feloniously make and present, and cause to be made and presented, for approval and payment to one Capt. A. R. Piper, who was then and there an officer in the military service of the United States, a certain false claim and public voucher upon and against the Quartermaster Department of the United States Army."

The Federal court, in sustaining the demurrer, said:

"The second point of objection urged by the defendants against the indictment herein applies to each of the five counts contained in the indictment. The objection is bottomed upon the fact that the indictment does not aver that the alleged voucher was presented to any officer of the United States clothed with authority to examine and approve such voucher for payment, nor does either of the five counts thereof allege anything touching such authority. It will be noted that the only charge made therein opposite to this point is that the alleged false voucher was presented for approval and payment to one Capt. A. R. Piper who was then and there an officer in the military service of the United States.

"It will be observed that nothing whatever is averred in the indictment as to the authority of Capt. Piper to approve and pay, or approve for

payment, the voucher in question; nor does such indictment set out the arm or branch of the service to which Capt. Piper belonged, so that judicial notice might eke out this omission. While the language of the statute merely makes it an offense to present a false voucher to any civil, military, or naval officer, yet obviously by this language is meant that the officer to whom such voucher shall be presented must be a civil, military, or naval officer, clothed with power to approve and pay the same. Otherwise the mere presentation of a false voucher to any officer of the United States, military, naval or civil, would be a crime, whether such officer had authority to act in the premises or not. Such condition is unthinkable. I am of opinion that the ruled cases require that an apt allegation of such authority ought to be made in each of the five counts of the indictment. *Bridgman v. U. S.*, 140 Fed. 577, 72 C. C. A. 145; *U. S. v. Reichert*, (C. C) 32 Fed. 142; *U. S. v. Franklin*, (C. C.) 174 Fed. 161; *U. S. v. Wallace*, (D. C.) 40 Fed. 14; *U. S. v. Greene*, (D. C.) 115 Fed. 343.

"While some of these cases were not prosecutions under either section 35 or 37 of the Penal Code, yet what is said in them obviously is opposite to the condition presented in the instant case. I therefore hold that an apt allegation that the officer, to whom the voucher in question was presented, was vested with authority to approve for payment, or to pay such voucher, was necessary, and that lacking such allegation the indictment as to each of the five counts thereof, is in this behalf, defective."

In an earlier case (*U. S. v. Reichert,* supra) the Federal court again sustained a demurrer to the indictment under the identical statute for the similar reason that the indictment was fatally defective in not alleging that the officer to whom the false claim was presented had authority to approve and allow such claim.

The appellate court in sustaining the demurrer to the indictment said on page 143:

> "But I agree with the circuit judge that the absence of any averment of authority in the surveyor general to allow and approve the claim which was presented to him, is, of itself, a fatal defect."

In *U. S. v. Wallace,* supra, the defendant was indicted under the identical statute. The indictment charged that defendant did present for payment to George I. Cunningham, he being an officer in the civil service of the United States, that is, being United States Marshall in and for the district of South Carolina, a claim against the government of the United States. The court sustained the demurrer to the indictment on the ground that it was not shown that Cunningham had authority to approve and pay such claim.

In the case of *U. S. v. Stubbs,* 6 Alaska 736, the defendant was on trial for presenting a false and fictitious claim to the United States. On motion for a directed verdict, the indictment was held insufficient because of a total omission of any allegation or state-

ment which charged that this alleged false claim was a claim against the government of the United States.

It does not so much as appear from the indictment that the "Camp Director" referred to therein was an officer of the United States or that he was clothed with power to approve and pay the claim and voucher described or any claim or voucher.

The designation "director" is nowhere used in the statutes, executive orders, or departmental regulations promulgated by authority of law to indicate "an officer of the United States" attached to the Schofield Camp of the Civilian Conservation Corps "clothed with power to approve and pay" the claim and voucher described in the indictment.

The rule long ago enunciated by the Supreme Court of the United States in *U. S. v. Tingey,* 5 Pet. 115, 8 L. Ed. 66, is still the law.

> "There is no statute of the United States expressly defining the duties of pursers in the navy. What those duties are, except so far as they are incidentally disclosed in public laws, *cannot be judicially known by this Court.* If they are regulated by the usage and customs of the Navy, or by the officials orders of the Navy Department, they properly constitute matters of averment, and *should be spread upon the pleading.*"

And even were there such an officer as camp director "clothed with power to approve and pay" claims and vouchers on behalf of the United States, the trial Court could not supply the deficiency in the

indictment by the application of the rule which permits the taking of judicial notice of certain facts.

In *Arkansas v. Kansas & T. Coal Co.*, 183 U. S. 185, 46 L. Ed. 144, it is said at page 147:

> "And as to judicial knowledge, the principle applies that the right of a court to act upon what is in point of fact known to it must be subordinate to those requirements of form and orderly communication which regulate the mode of bringing controversies into court, and of stating and conducting them."

In *Brown v. Piper*, 91 U. S., 28 L. Ed. 200 at 202 the rule is stated thus:

> "This power of judicial notice is to be exercised by courts with caution. Care must be taken that the requisite notoriety exists. Every reasonable doubt upon the subject should be resolved promptly in the negative."

It nowhere appears, in statute, in executive order, or in departmental regulation promulgated by authority of law, that a camp director is a "civil, military, or naval officer clothed with power to approve and pay claims and vouchers," hence it follows the deficiency in the indictment cannot be supplied.

This deficiency is a matter of substance and not of form affecting as it does the right of defendants not to be placed on trial except after indictment clearly showing that they are charged with a violation of a statute in the words of the statute or their equivalent.

POINT 3.

It is respectfully submitted that it was an abuse of discretion to sever the case as to Miles and Cunningham and requiring Mookini and Lee Sau Chong to stand trial together, thus making it appear that these two defendants were acting jointly. In other words, to properly safeguard appellant's right to a fair trial, each of the four defendants should have been tried separately or all four should have been tried together.

POINT 4.

Ponzi v. Fessenden, 258 U. S. 254, 260; and *Shields v. United States,* 273 U. S. 583, 588, are authority for the proposition of law that appellants were entitled to be personally present at every stage of the trial.

Fillipon v. Albion Vein Slate Co., 250 U. S. 76; *Shields v. United States,* 273 U. S. 583; *Philadelphia R. Ry. Co. v. Skerman,* (C. C. A. 2) 247 Fed. 269; *Dodge v. United States,* (C. C. A. 2) 258 Fed. 300; *Outlaw v. United States,* (C. C. A. 5) 81 F.(2d) 805; *Sandusky Cement Co. v. A. R. Hamilton & Co.,* (C. C. A. 6) 287 Fed. 609; *Peppers v. United States,* (C. C. A. 6) 37 F.(2d) 346; *Little v. United States,* (C. C. A. 10), 73 F.(2d) 861; are authority for the proposition of law that it is error for the court to instruct or communicate with the jury in the absence of counsel and without notice to them.

Though the record may not disclose whether error committed in the trial of a criminal case is prejudicial or is not prejudicial, error having been shown, it is

presumed to be prejudicial and to require reversal (*Little v. United States,* (C. C. A. 10) supra; *Mrs. Ah Fook Chang et al v. United States,*.....F.(2d)..... (C. C. A. 9), decided July 26, 1937).

CONCLUSION.

For the reasons set out above, it is respectfully submitted that this case is one which justifies the granting of a Writ of Certiorari and thereafter reviewing and reversing the adverse decisions.

Dated at Honolulu, Hawaii, this 10th day of August, 1937.

O. P. SOARES,
Counsel for Petitioners.

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI AND LEE SAU CHONG,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

We do not oppose the granting of a writ of certiorari in this case. We respectfully suggest, however, that review be limited to the question whether the Criminal Appeals Rules, promulgated by this Court May 7, 1934, are applicable to criminal cases in the United States District Court for the Territory of Hawaii.

Petitioners were convicted in the United States District Court for the Territory of Hawaii, upon verdict of a jury, of presenting false claims, in violation of Section 35 of the Criminal Code (U. S. C.,

16372—37

Title 18, Sec. 80), on May 28, 1935 (R. 80). They filed separate motions for new trials on June 7, 1935 (R. 81, 92), which were denied on June 19, 1935 (R. 78–79). Petitioners were sentenced on June 29, 1935 (R. 79–80). On September 27, 1935, they petitioned for an appeal (R. 114), which was allowed by the trial court on the same day (R. 115). The Circuit Court of Appeals for the Ninth Circuit held that the Criminal Appeals Rules govern the practice and procedure in criminal cases in the United States District Court for the Territory of Hawaii; and that, as the appeal had not been taken within five days after the entry of the order denying the motions for a new trial, as required by Rule III, it must be dismissed (R. 1016–1021).[1] Accordingly, the Circuit Court of Appeals did not pass upon any of the questions presented by the petitioners' assignment of errors (R. 116–127).

In neither the original brief of the petitioners nor that of the Government in the Circuit Court of Appeals was there any question presented as to whether the Criminal Appeals Rules are or are not applicable to the United States District Court for the Territory of Hawaii. It appears, however, that on oral argument that court, on May 24, 1937, raised this question itself, and that counsel were instructed to file further briefs. (See R. 1015.)

[1] The Circuit Court of Appeals also pointed out that the appeal was not taken in the manner specified in Rule III, i. e., by notice of appeal (R. 1017).

In their supplemental brief, Government counsel called to the attention of the court the fact that the District Court of Hawaii and the United States Attorney for that District had been advised by the Attorney General that the Criminal Appeals Rules were, in his opinion, not applicable to the District Court for the Territory of Hawaii. Government counsel also pointed out that the Attorney General, in submitting to this Court a draft of proposed rules governing practice and procedure in criminal cases, stated that as there was not sufficient data at hand upon which to predicate proposals at that time relative to practice and procedure in cases instituted in the District Court of Hawaii, as well as in other territorial, insular or consular courts, "The Rules [proposed] are limited in their application to proceedings in cases instituted in the District Courts of the United States and in the Supreme Court of the District of Columbia."[2]

Government counsel, in their supplemental brief, then referred to considerations based upon the language of various provisions of the Hawaiian Organic Act, the statute under which the Rules were promulgated, and the order of this Court promulgating the Rules, from which the conclusion could be drawn that the Rules were applicable to the District Court for the Territory of Hawaii. A

[2] See extracts from the supplemental brief of Government counsel in the Circuit Court of Appeals which are printed in the Appendix, *infra* p. 5.

sufficient statement of such considerations for present purposes is embodied in the opinion of the Circuit Court of Appeals (R. 1016–1021).

The question is obviously one as to which an authoritative expression from this Court is desirable.

STANLEY REED,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
WILLIAM W. BARRON,
Special Assistant to the Attorney General.
M. JOSEPH MATAN,
W. MARVIN SMITH,
Attorneys.

SEPTEMBER 1937.

APPENDIX

Extracts from the supplemental brief of Government counsel filed in the Circuit Court of Appeals:

> Before proceeding to discuss the applicability of the rules it should be stated that this office has been advised by the Attorney General that the rules are in his opinion inapplicable, and that the District Court of Hawaii and the United States Attorney for the District of Hawaii are so advised.
>
> * * * * *
>
> If the intent of the Supreme Court may be ascertained from the history of the enactment of the rules, it seems that they were originally drafted and submitted to the Chief Justice with intention that the District Court of Hawaii be excepted from their operation.
>
> On May 26, 1933 the Attorney General of the United States upon the request of the Chief Justice presented a draft of proposed rules governing practice and procedure in criminal cases. This draft in part forms the basis of the rules adopted by the Supreme Court. This draft, in designating the courts to be affected uses the identical language of the rules, i. e. "District Courts of the United States."
>
> The Attorney General in a statement accompanying the draft states:
> "The Rules are limited in their application to proceedings in cases instituted in the District Courts of the United States and in the Supreme Court of the District of Colum-

bia. There is not sufficient data at hand upon which to predicate proposals at this time relative to practice and procedure in cases instituted in the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, or in the Supreme Courts of Hawaii and Puerto Rico, or in the United States Court for China. It is thought that it would be the part of wisdom to establish the rules for practice and procedure for Continental United States before attempting to provide for the Territories, Insular Possessions and Consular Courts, as these situations will undoubtedly require special treatment because of local conditions and the distance separating the trial court from the Appellate Court."

Assuming that the intent expressed by the Attorney General was adopted with his language it is clear that the intention was to exclude the District Court of Hawaii from the operation of the rules.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 319

ROBERT K. MOOKINI AND LEE SAU CHONG,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was rendered by the trial court. The opinion of the Circuit Court of Appeals (R. 1016–1021) is reported in 92 F. (2d) 126.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 26, 1937 (R. 1021). The petition for writ of certiorari was filed August 16, 1937, and granted October 18, 1937 (R. 1024). The jurisdiction of this Court is invoked under Section 240 (a)

of the Judicial Code as amended by Act of February 13, 1925.[1]

QUESTION PRESENTED

Whether the Criminal Appeals Rules of May 7, 1934, apply to an appeal taken by defendants in a criminal case from the District Court in the Territory of Hawaii to the Circuit Court of Appeals for the Ninth Circuit.

STATUTES AND RULES INVOLVED

The pertinent statutes and rules involved are copied in the Appendix, *infra*, pp. 27–33.

STATEMENT

Petitioners were jointly indicted in the District Court for the Territory of Hawaii in two counts charging violation of Section 35 of the Criminal Code (U. S. C., Title 18, Sec. 80) by presenting fraudulent claims (R. 5–11). They were tried together (R. 64), and on May 28, 1935, the jury found Mookini guilty on one count and Chong guilty on both (R. 80). They filed separate motions for new trials on June 7, 1935 (R. 81, 92), which were heard together and denied on June 19, 1935 (R. 78–79). Petitioners were sentenced on June 29, 1935 (R. 79–80). They orally noted an appeal immediately (R. 80, 104, 110), but filed no written appeal papers until September 27, 1935. They then filed a "notice

[1] As the petition for writ of certiorari was filed with this Court within thirty days after entry of judgment by the Circuit Court of Appeals, it was in time under the Criminal Appeals Rules promulgated by this Court May 7, 1934. (See Rule XI, Criminal Appeals Rules.)

of appeal" (R. 113–114) and on the same day filed a document which was entitled "petition for appeal," but which did not specifically pray for the allowance of an appeal (R. 114–115). An order of the District Court, dated the same day, recited that "The foregoing appeal is allowed" (R. 115). Also, on September 27, 1937, citation on appeal was issued and served on counsel for the Government (R. 127–128).

The appeal was obviously not taken within the five-day period prescribed by Rule III of the Criminal Appeal Rules promulgated by this Court on May 7, 1934 (*infra*, p. 29). Moreover, the Circuit Court of Appeals, having treated the appeal as having been taken to that court on petition for appeal, stated that the appeal also was not taken in the manner specified in Rule III (R. 1017).[2] The appeal was, however, taken within the three-month period prescribed by Section 8 (c) of the Act of February 13, 1925 (*infra*, p. 30).[3]

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[2] Rule III (*infra*, p. 29) abolishes petitions for allowance of appeal and citations in cases covered by the Rules, and substitutes a notice of appeal, a copy of which is required to be served on the United States Attorney.

[3] We deem it unnecessary here to make any point as to the sufficiency of the "petition for appeal" to meet the requirements of Section 8 (c) of the Act of February 13, 1925, if that statute, rather than Rule III of the Criminal Appeals Rules, governs. We assume that the case will be remanded to the Circuit Court of Appeals, if Section 8 (c) applies, for the consideration of questions on the merits not passed upon by that court, and the point is one which should be made, if it has any merit, in the Circuit Court of Appeals.

In neither the original brief for the petitioners nor that of the Government in the Circuit Court of Appeals was there any question presented as to whether the Criminal Appeals Rules are or are not applicable to the District Court for the Territory of Hawaii. From a supplemental brief filed by the Government in the Circuit Court of Appeals (p. 1), it appears, however, that on oral argument that court, on May 24, 1937, raised this question itself, and that counsel were requested to file further briefs. (See R. 1015.)

In its supplemental brief, the Government advised the Circuit Court of Appeals as follows (pp. 4, 8–9):

> Before proceeding to discuss the applicability of the rules it should be stated that this office has been advised by the Attorney General that the rules are in his opinion inapplicable, and that the District Court of Hawaii and the United States Attorney for the District of Hawaii are so advised.
>
> * * * * *
>
> If the intent of the Supreme Court may be ascertained from the history of the enactment of the rules, it seems that they were originally drafted and submitted to the Chief Justice with intention that the District Court of Hawaii be excepted from their operation.
>
> On May 26, 1933, the Attorney General of the United States upon the request of the Chief Justice presented a draft of proposed rules governing practice and procedure in

criminal cases. This draft in part forms the basis of the rules adopted by the Supreme Court. This draft, in designating the courts to be affected uses the identical language of the rules, i. e. "District Courts of the United States."

The Attorney General in a statement accompanying the draft states:

"The Rules are limited in their application to proceedings in cases instituted in the District Courts of the United States and in the Supreme Court of the District of Columbia. There is not sufficient data at hand upon which to predicate proposals at this time relative to practice and procedure in cases instituted in the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, or in the Supreme Courts of Hawaii and Puerto Rico, or in the United States Court for China. It is thought that it would be the part of wisdom to establish the rules for practice and procedure for Continental United States before attempting to provide for the Territories, Insular Possessions and Consular Courts, as these situations will undoubtedly require special treatment because of local conditions and the distance separating the trial court from the Appellate Court."[4]

* * * * *

[4] Comparison of this statement with that contained in the draft of the proposed rules transmitted to the Chief Justice by the Attorney General (published by the Government Printing Office, 1933) shows that the statement is accurate.

> Assuming that the intent expressed by the Attorney General was adopted with his language it is clear that the intention was to exclude the District Court of Hawaii from the operation of the rules.

However, the Circuit Court of Appeals held that the Criminal Appeals Rules apply to appeals taken from the District Court of Hawaii by virtue of the Organic Act, and dismissed the appeal on the sole ground that under such rules (R. 1020):

> The time within which appellants might have taken a valid appeal expired on July 6, 1935. This appeal, which they attempted to take on September 27, 1935, must be dismissed.

In dismissing the appeal the court below did not mention or pass upon any of the questions presented by the petitioners' assignment of errors (R. 116–127).

In their petition for writ of certiorari filed in this Court the petitioners referred only to the ruling of the Circuit Court of Appeals in dismissing, without reviewing the merits, their appeal as not taken in time (pp. 1–3). However, in their brief in support of the petition for writ of certiorari the petitioners argued not only that the Circuit Court of Appeals erred in dismissing the appeal but pre-

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The Government's supplemental brief omitted, however, the following additional paragraph which was contained in the Attorney General's statement:

"A few letters received from Judges in Hawaii and Alaska will be found in the files."

sented arguments based on alleged errors of the trial court which were not reviewed by the Circuit Court of Appeals (Br. 8–10). The Government did not oppose the petition for writ of certiorari but suggested that review be limited to the question whether the Criminal Appeals Rules are applicable to criminal cases in the District Court for the Territory of Hawaii. While this Court in granting the petition did not incorporate in its order the limitation suggested by the Government, this was probably unnecessary, as the only question passed upon by the Circuit Court of Appeals was the question of the applicability of the Criminal Appeals Rules to the District Court of Hawaii. We therefore assume that this is the only question which will be considered by this Court and that, if this Court should conclude that the Circuit Court of Appeals was in error in its holding, it will remand the case to that court for consideration of the appeal on its merits. The Government in this brief consequently confines its discussion to the question of the applicability of the Criminal Appeals Rules to the District Court for Hawaii.

SUMMARY OF ARGUMENT

1. It is our view that the only reasonable construction which can be given the Act of February 24, 1933, as amended, is that it so amended and modified the Hawaiian Organic Act as to permit this Court, after the enactment of the former stat-

ute, to prescribe a different system of rules governing the appellate procedure in criminal cases in the District Court for Hawaii from that applying to District Courts in continental United States. Until action by this Court the existing system of statutory regulations governing appellate procedure in such cases in the District Court for Hawaii remained in effect. Unless, therefore, this Court, in promulgating its Criminal Appeals Rules of May 7, 1934, indicated the intention that those rules should apply to the District Court for Hawaii, the court below was in error in dismissing the petitioner's appeal as not having been taken within the time prescribed in the Criminal Appeals Rules.

2. That this Court did not intend that the Criminal Appeals Rules should apply to the District Court for Hawaii is clear from the Rules themselves and its order of May 7, 1934, promulgating them, together with other circumstances.

3. While we are of the view that the court below erred in dismissing the petitioners' appeal upon the ground that the Criminal Appeals Rules of May 7, 1934, apply to the District Court for Hawaii, we do not formally confess error out of deference to the views of that court, but submit the case for decision by this Court.

As the court below, in dismissing the petitioners' appeal, did not pass upon the merits of such appeal, we respectfully submit that this Court should remand the case to the court below for further dis-

position if it agrees with the Government's view that the Criminal Appeals Rules do not apply to the District Court for Hawaii.

ARGUMENT

I.

THE ACT OF FEBRUARY 24, 1933, AS AMENDED, SO AMENDED THE HAWAIIAN ORGANIC ACT AS TO PERMIT THIS COURT TO PRESCRIBE A DIFFERENT SYSTEM OF RULES FOR APPEALS FROM CONVICTIONS IN CRIMINAL CASES IN THE DISTRICT COURT FOR HAWAII FROM THAT APPLYING TO APPEALS FROM DISTRICT COURTS IN CONTINENTAL UNITED STATES. UNTIL ACTION BY THIS COURT THE EXISTING SYSTEM OF STATUTORY REGULATIONS GOVERNING APPELLATE PROCEDURE IN SUCH CASES IN THE DISTRICT COURT OF HAWAII REMAINED IN EFFECT

While we are of the opinion that the Circuit Court of Appeals erred in holding that the Criminal Appeals Rules apply to appeals taken from the District Court for Hawaii, and therefore should not have dismissed the petitioners' appeal for that reason, we do not formally confess error out of deference to the views of the Circuit Court of Appeals.

The holding of the court below was based upon the view that when this Court, by its order of May 7, 1934 (*infra,* p. 28), provided that the Criminal Appeals Rules should "be adopted as the Rules of Practice and Procedure in all proceedings" subsequent to determination of guilt "in criminal cases in District Courts of the United States * * * and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeal," those

rules automatically applied to the District Court for Hawaii by virtue of the provision of the Organic Act (*infra*, pp. 32–33) that "Appeals from the said district court shall be had and allowed to the circuit court of appeals for the ninth judicial circuit in the same manner [5] as appeals are allowed from district courts [6] to circuit courts of appeal as provided by law." The court below consequently held that, as the Criminal Appeals Rules required (Rule III, *infra*, p. 29) that an appeal must be taken within five days after entry of judgment of conviction or order denying a motion for a new trial, the appeal in the instant case must be dismissed because not taken within the period prescribed by such rule.

Utilizing the same reasoning, the Circuit Court of Appeals would have been required to hold that even if this Court, in prescribing the Criminal Appeals Rules, had specifically declared that they did not apply to the District Court for Hawaii, they would, nevertheless, have had such application under the Organic Act because they governed the procedure on appeal from District Courts of the United States to Circuit Courts of Appeals.

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[5] In line with the decision of the Circuit Court of Appeals, we assume that the term "manner," as used in the Hawaiian Organic Act, is broad enough to include not only the method of taking the appeal but also the time limitation upon the taking of the appeal.

[6] Congress was here clearly referring to District Courts of the United States. Cf. section of Hawaiian Organic Act contained in U. S. C., Title 48, Sec. 642, *infra*, p. 31.

The fundamental error of the court below lies, we submit, in its misconception of the purpose and intent of the Act of February 24, 1933, as amended (*infra*, p. 27), pursuant to which the Criminal Appeals Rules were prescribed, and the consequent effect of that statute upon the provision of the Hawaiian Organic Act upon which the court below relies.

Under the statutory system existing at the time of the passage of the Act empowering this Court to prescribe rules of appellate practice and procedure in criminal cases, an appeal to the Circuit Court of Appeals was required to be taken in any case, civil or criminal, by a petition for appeal[7] filed within three months after the entry of judgment or decree. See Section 8 (c), Act of February 13, 1925 (*infra*, p. 30). As this section covered appeals both from the District Courts of the United States and from the District Court of Hawaii (see Section 128 (a), second, Judicial Code, as amended by the Act of February 13, 1925, *infra*, p. 30), it was in harmony with the provision of the Hawaiian Organic Act that appeals from the District Court of Hawaii "shall be had and allowed to the circuit court of appeals for the ninth judicial circuit in the same manner as appeals are allowed from district courts to circuit courts of appeal as provided by law."

[7] Allowance of the petition was required. See *Alaska Packers* v. *Pillsbury*, 301 U. S. 174.

The Act of February 24, 1933, as amended, it is our contention, so modified and amended the Hawaiian Organic Act as to permit this Court, in its discretion, to prescribe a set of rules covering the practice on appeals from convictions in the District Court of Hawaii which differed from that adopted for District Courts of the United States.

In Section 1 of the Act (*infra*, p. 27), it was provided that this Court "*shall have power to prescribe, from time to time,* rules of practice and procedure with respect to *any or all proceedings*" after determination of guilt, "in criminal cases in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, in the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States." In Section 2 it was provided that "the rules made as herein authorized *may* prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed." And in Section 3 it was provided that this Court "*may* fix the dates when such rules shall take effect and the extent to which they shall apply to proceedings then pending, and after they become effective all laws in con-

flict therewith shall be of no further force." [Italics ours.]

The highly permissive and wholly discretionary character of the rule-making power conferred upon this Court is apparent. This Court "shall have power" to prescribe rules. This clearly is the power to make or not to make rules, as this Court may deem advisable.

Rules may be prescribed "from time to time." This language obviously means that the Court may prescribe a portion of the rules at one time and another portion at another time. It expresses the power to cumulate rules and is inconsistent with the idea that this Court is permitted to prescribe only a single set of rules. The language was not needed to confer the power of amendment, for, of course, the power to make rules includes the power to amend them.

As a further indication of the wide discretion conferred upon this Court, the Act provided that the rule-making power could extend "to any or all proceedings" after determination of guilt.

Similarly unfettered was the discretion reposed in this Court to determine the particular courts to which it would apply the rules which it might adopt from time to time. This Court was permitted to adopt rules regulating the procedure and practice, after determination of guilt, "in criminal cases *in* district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico,

Canal Zone, and Virgin Islands, *in* the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, *in* the United States Court for China, *in* the United States Circuit Courts of Appeals, *in* the Court of Appeals of the District of Columbia, and *in* the Supreme Court of the United States." [Italics ours.] Certainly, it would be difficult to contend that, upon the basis of the language employed, this Court was required to prescribe the same rules for District Courts in continental United States that it prescribed for the United States Court for China or for the Supreme Courts of the District of Columbia, Hawaii, or Puerto Rico, or any of them. It cannot be doubted that Congress intended that this Court should be permitted to adopt the same or different rules for these courts as it saw fit, depending upon what this Court's study of the conditions applicable to courts different in character from District Courts in continental United States should dictate.

The language employed in conferring upon this Court power to make rules for the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands is, it is true, different from that utilized in the succeeding clauses in connection with the other courts to which we have referred. But there is certainly nothing in this language which requires the conclusion that this Court was empowered only to adopt identical rules for the District Courts in continental United States and the

territorial and insular District Courts.[8] The language employed by Congress is that this Court shall have power to adopt rules in criminal cases "in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands." This language is susceptible of several interpretations, none of which is favorable to the view that the same rules must be adopted for all of the courts enumerated. One is that in adopting rules for District Courts in continental United States, this Court was empowered, within its discretion, to include or not to include the territorial and insular District Courts. If it did not include them in rules adopted for the District Courts in continental United States, obviously the existing statutory system regulating the procedure on appeals from convictions in criminal cases in the territorial and insular District Courts would remain in effect until this Court determined to include these courts within the purview of the rules prescribed for District Courts in continental United States. While this would, so far as the District Court for Hawaii is concerned, constitute an amendment or modification of the Hawaiian Organic Act to the extent that it would permit this Court to sanction for the District Court of Hawaii a different system of regulation of appellate pro-

[8] Neither the committee reports nor the debates throw any light on the question here involved. See Sen. Rpt. No. 627, 72d Cong., 1st sess.; H. Rpt. No. 2047, 72d Cong., 2d sess.; Sen. Rpt. No. 257, H. Rpt. No. 858, 73d Cong., 2d sess.

cedure from what it applied to District Courts in continental United States, there is another construction of the language employed which, we believe, is more in harmony with the manifest purpose of the statute considered as a whole.

That construction is that Congress intended by the language employed merely to make certain that this Court was empowered to prescribe such rules of practice as it deemed advisable not only for District Courts in continental United States but also for the territorial and insular District Courts. If Congress had merely used the term "district courts of the United States", the question would have arisen as to whether Congress intended to empower this Court also to make rules for the territorial and insular District Courts. It was, apparently, to forestall any such question that Congress used the language "district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands." This may be illustrated by particular reference to the District Court of Hawaii. While the Organic Act of Hawaii (*infra,* p. 31) provides that the District Court for that territory "shall have the jurisdiction of district courts of the United States," it had been settled long prior to the legislation empowering this Court to prescribe rules for criminal appeals that such a grant of power did not make a territorial court a "District Court of the United States."

As was said by this Court in *United States* v. *Burroughs,* 289 U. S. 159, 163, in speaking of a similar provision as to the Supreme Court of the District of Columbia in the local Code:

> * * * Where a statute uses this or similar language to define the jurisdiction of a court, such a court is authorized to try statutory actions declared to be cognizable by district courts, as if the tribunal were in fact a district court of the United States. And the same rule is applicable to appellate proceedings. Compare *In re Cooper,* 143 U. S. 472, 494; *Hine* v. *Morse,* 218 U. S. 493; *Federal Trade Commission* v. *Klesner,* 274 U. S. 145, 154; *United States* v. *California Cooperative Canneries,* 279 U. S. 553, 558. But vesting a court with "the same jurisdiction as is vested in district courts" does not make it a district court of the United States. This has been repeatedly said with reference to territorial courts. *Reynolds* v. *United States,* 98 U. S. 145, 154; *Stephens* v. *Cherokee Nation, supra* [179 U. S. 445], p. 476; *Summers* v. *United States,* 231 U. S. 92, 101.[9]

[9] This case is of added significance because this Court, while holding that the Supreme Court of the District of Columbia was not a "District Court of the United States" within the meaning of the Criminal Appeals Act, decided in a later case at the same term that it was a constitutional court of the United States within the meaning of Article III of the Constitution, and that, therefore, the salaries of its judges could not be diminished by Congress during their continuance in office *O'Donoghue* v. *United States,* 289 U. S. 516.

See also to the same effect the views of the Advisory Committee appointed by this Court to submit a draft of proposed rules of civil procedure quoted at page 21, *infra*.[10]

A third explanation of the language utilized, which lends no support to the view that this Court was required to prescribe the same rules for the territorial and insular District Courts as it adopted for District Courts in continental United States, is that Congress merely, for convenience, enumerated the courts in accordance with their similarity in name and without reference to their similarity in other respects. We thus find that Congress placed in one group all of the Supreme Courts, the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, even though the Supreme Court of the District of Columbia [now called the District Court of the United States for the District of Columbia [11]] was primarily a trial court,[12] while

[10] The fact that the District Court of Hawaii has styled itself the "United States District Court for the Territory of Hawaii" (R. 5) or that that court was sometimes referred to in statutes antedating the enactment of the Act of February 24, 1933, as amended, as a "United States district court" (Sec. 128 (a), Judicial Code, as amended by the Act of Feb. 13, 1925, *infra*, p. 30) obviously has no greater weight in making the District Court for Hawaii a "District Court of the United States" than does the provision in the Organic Act quoted above.

[11] Act of June 25, 1936, c. 804, 49 Stat. 1921.

[12] The Code of the District of Columbia, March 4, 1929. Title 18, Secs. 43, 44.

the Supreme Courts of Hawaii and Puerto Rico are appellate courts.[13] Similarly, Congress placed in another group all courts bearing the title "District Courts," even though they were created under different provisions of the Constitution, the District Courts of the United States being created pursuant to the authority conferred upon Congress by Article III and the territorial and insular District Courts being created pursuant to the power vested in Congress by Article IV, Section 3, clause 2, or by virtue of the general right of sovereignty existing in the Government. *O'Donoghue* v. *United States,* 289 U. S. 516, *supra.*

Considering the statute as a whole, it is evident, we believe, that Congress intended that the complete regulation of the practice and procedure in criminal cases in the Federal, territorial, and insular courts, after determination of guilt, should be confided to the discretion of this Court. So far as the territorial and insular District Courts are concerned, the statute, fairly interpreted, reposed in this Court the discretion to determine whether it would apply to all or any of those courts rules which it adopted for the District Courts in continental United States, whether it would prescribe separate and different rules for all or any of these

[13] Revised Laws of Hawaii (1935), Sec. 3593; Act of Porto Rico of March 12, 1903, Sec. 1, contained in Code of Civil Procedure of Puerto Rico, 1933 ed., p. 293, and in Compilation of Revised Statutes and Codes of Porto Rico on March 9, 1911, Sec. 1141. See also Code of Criminal Procedure (1935), Sec. 345.

courts, or whether it would leave in force the existing statutory regulations as to any or all of such courts. It thus followed, we submit, that the Hawaii Organic Act was amended or modified by the Act of February 24, 1933, as amended, to the extent that, after enactment of the latter statute, this Court was permitted to prescribe a different system of appellate procedure for the District Courts in continental United States from that applying to the District Court for Hawaii.

Until action is taken by this Court specifically prescribing rules of appellate procedure and practice for cases in the District Court of Hawaii and the other territorial and insular District Courts, it is obvious that the existing statutory system remains in effect. While the grant of power to make rules conferred upon this Court by the Act of 1933, as amended, was one *in praesenti,* it was, of course, not susceptible of immediate exercise. Study was required of the evils resulting from the old system, with a view to devising appropriate remedies. In determining what rules should be adopted for the courts outside of continental United States, or whether the existing system should be maintained, consideration was, of course, required to be given to local conditions and the distance separating those courts from the appellate courts in this country. Unless, therefore, this Court, in promulgating its Criminal Appeals Rules of May 7, 1934, indicated

the intention that those rules should apply to the District Court for Hawaii, the petitioners had three months under the existing statute (*infra,* p. 30) within which to appeal to the Circuit Court of Appeals for the Ninth Circuit and that court was therefore in error in holding that the appeal should be dismissed because not taken within the time prescribed by the Criminal Appeals Rules.

There is nothing in the views of the Advisory Committee appointed by this Court to submit a draft of proposed rules of civil procedure which is essentially in conflict with our interpretation of the Act of February 24, 1933, as amended, authorizing this Court to prescribe rules of criminal practice and procedure. In its report of April 1937, that Committee, by an interpretative note to Rule 1, which defined the scope of the proposed rules of civil procedure as governing "the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity," said (Note 2):

> 2. The expression "districts courts of the United States" appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure does not include the district courts held in the territories and insular possessions. The rules, however, by virtue of the organic acts of the territories and insular possessions will

apply to the district courts of Hawaii and Puerto Rico, but will not apply to the district courts of Alaska, the Virgin Islands, and the Canal Zone. Hawaii: U. S. C., Title 48, § 642 (Jurisdiction of district courts; authority of officers); § 645 (Appeals). Puerto Rico: U. S. C., Title 48, § 863 (District of Puerto Rico; Officers; jurisdiction; vacancies); § 864 (Appeals; removal of causes; certiorari; terms of district court; use of English language); § 865 (Appeals); § 867 (juries in district court; qualifications). Alaska: U. S. C., Title 48, § 23 (Constitution and laws of the United States extended); see § 90 (Laws submitted to Congress); see also the complete code of civil procedure enacted under these statutes, Alaska Compiled Laws (1933) tit. 3. The Virgin Islands: U. S. C., Title 48, § 1392 (Local laws continued; courts; appeals); see also § 1405z (Judicial branch; divisions of district court; terms; rules of practice; process). The Canal Zone: U. S. C., Title 48, § 1344 (District Court generally; rules of practice).

It will be noted, however, that the statute authorizing this Court to promulgate rules of civil procedure (Act June 19, 1934, c. 651, 48 Stat. 1064; U. S. C., Title 28, Sec. 723b, 723c), provided merely that this Court "shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process," etc. Without discussing the correctness of the Advisory

Committee's conclusion as to the applicability of the proposed rules of civil procedure to the District Court of Hawaii, it suffices to say that there is not in the Act authorizing this Court to prescribe rules of civil procedure any such affirmative language indicating the intention of Congress to permit the adoption of different rules of procedure for the District Courts in continental United States and for the District Court of Hawaii as appears in the statute empowering this Court to adopt rules of criminal practice and procedure.

If our construction of the Act of February 24, 1933, as amended, is correct, the only remaining question is whether this Court intended that its Criminal Appeals Rules of May 7, 1934, should apply to the District Court for Hawaii.

II

THE CRIMINAL APPEALS RULES AND ORDER OF THIS COURT OF MAY 7, 1934, PROMULGATING THEM, TOGETHER WITH OTHER CIRCUMSTANCES, INDICATE CLEARLY THAT THIS COURT DID NOT INTEND THAT THOSE RULES SHOULD APPLY TO THE DISTRICT COURT FOR HAWAII

It would seem unnecessary to discuss at any length the proposition that this Court did not intend that the Criminal Appeals Rules promulgated May 7, 1934, should apply to the District Court for Hawaii, as this was apparently not disputed by the court below, the decision of that court being based solely upon the ground that the Rules became applicable solely by virtue of the provision of the Hawaiian Organic Act previously discussed.

That it was not the intention of this Court that the Criminal Appeals Rules should apply to the District Court for Hawaii is clear.

The Criminal Appeals Rules themselves disclose that they were intended to apply only to District Courts in continental United States. Rule XIII (*infra*, p. 30) provides that "For the purpose of computing time as specified in the foregoing rules, Sundays and legal holidays (whether under Federal law or *under the law of the State where the case was brought*) shall be excluded." [Italics ours.]

Also, while the Act of February 24, 1933, as amended (*infra*, p. 27) permitted this Court to prescribe rules for the "district courts of the United States, including the District Courts of Alaska, Hawaii," etc., the Court's order promulgating the rules (*infra*, p. 28) adopted them only for the "District Courts of the United States."[14] In addition to the fact that this Court was well aware at the time it adopted the Criminal Appeals Rules that the territorial and insular District Courts were not "District Courts of the United States" (see discussion on p. 16–18, *supra*), there can be no doubt, if our interpretation of the statute is correct, that by using merely the term "District Courts of the United States" in its order promulgating the rules, the Court intended to eliminate from the application of the rules the District Court of Hawaii.

[14] See also Paragraph 1 of Rule XIII, *infra*, p. 29.

In addition, it may be pointed out that, as was stated in the supplemental brief filed by the Government in the court below (*supra*, pp. 4–6), the Attorney General, in submitting, at the request of this Court a draft of proposed rules on May 26, 1933, specifically indicated that the suggested rules were confined in their application to "District Courts of the United States" and "the Supreme Court of the District of Columbia," i. e. courts in continental United States for the reasons that:

> There is not sufficient data at hand upon which to predicate proposals at this time relative to practice and procedure in cases instituted in the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, or in the Supreme Courts of Hawaii and Puerto Rico; or in the United States Court for China. It is thought that it would be the part of wisdom to establish the rules for practice and procedure for Continental United States before attempting to provide for the Territories, Insular Possessions, and Consular Courts, as these situations will undoubtedly require special treatment because of local conditions and the distance separating the trial court from the Appellate Court.
>
> A few letters received from Judges in Alaska will be found in the files.

Presumably this Court in promulgating its rules, using the same phrase "District Courts of the United States," had these considerations in mind and consequently intended by the language utilized in its order to limit their application to courts in

continental United States. Upon the understanding that the rules promulgated did not apply to the District Court for Hawaii, the Attorney General advised the District Judges for that court and the United States Attorney for the Territory to that effect.

CONCLUSION

While we are of the opinion that the court below erred in dismissing the petitioners' appeal upon the ground that the Criminal Appeals Rules of May 7, 1934, apply to the District Court of Hawaii, we do not formally confess error out of deference to the views of that court but submit the case for decision by this Court.

If this Court should decide that the Circuit Court of Appeals was in error in dismissing the appeal on the ground stated, we respectfully submit that the case should be remanded to that court for further disposition.

GOLDEN W. BELL,
Acting Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
WILLIAM W. BARRON,
BATES BOOTH,
Special Assistants to the Attorney General.
W. MARVIN SMITH,
Attorney.

JANUARY 1938.

APPENDIX

STATUTES AND RULES INVOLVED

Act of February 24, 1933, as amended March 8, 1934 (U. S. C., Title 28, Sec. 723a):

> That the Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, in the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States: *Provided,* That nothing herein contained shall be construed to give the Supreme Court the power to abridge the right of the accused to apply for withdrawal of a plea of guilty, if such application be made within ten days after entry of such plea, and before sentence is imposed.
>
> SEC. 2. The right of appeal shall continue in those cases in which appeals are now authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.
>
> SEC. 3. The Supreme Court may fix the dates when such rules shall take effect and

the extent to which they shall apply to proceedings then pending, and after they become effective all laws in conflict therewith shall be of no further force.

Order of this Court of May 7, 1934, promulgating the Criminal Appeals Rules:

> Pursuant to the provisions of the Act of Congress, approved March 8, 1934, amending an Act entitled "An Act to give the Supreme Court of the United States authority to prescribe Rules of Practice and Procedure with respect to proceedings in criminal cases after verdict" (Act of February 24, 1933, c. 119, U. S. C., Title 28, Sec. 723 (a))—
>
> It is ordered on this seventh day of May, 1934, that the following rules be adopted as the Rules of Practice and Procedure in all proceedings after plea of guilty, verdict of guilt by a jury or finding of guilty by the trial court where a jury is waived, in criminal cases in District Courts of the United States and in the Supreme Court of the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Court of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.
>
> It is further ordered that these rules shall be applicable to proceedings in all cases in which a plea of guilty shall be entered or a verdict or finding of guilt shall be rendered, on or after the first day of September, 1934.

Rule II, paragraph 2, of the Criminal Appeals Rules:

> II. *Motions.* * * * (2). Save as provided in subdivision (3) of this Rule, motions in arrest of judgment, or for a new trial, shall be made within three (3) days after verdict or finding of guilt.

Rule III of the Criminal Appeals Rules:

III. *Appeals.* An appeal shall be taken within five (5) days after entry of judgment of conviction, except that where a motion for a new trial has been made within the time specified in subdivision (2) of Rule II, the appeal may be taken within five (5) days after entry of the order denying the motion.

Petitions for allowance of appeal, and citations, in cases governed by these rules are abolished.

Appeals shall be taken by filing with the clerk of the trial court a notice, in duplicate, stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and appellant's attorney, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and, if the appellant is in custody, the prison where appellant is confined. The notice shall also contain a succinct statement of the grounds of appeal and shall follow substantially the form hereto annexed.

Rule XIII of the Criminal Appeals Rules:

In the foregoing rules, the phrase "trial court" shall be deemed to refer to the District Courts of the United States and the Supreme Court of the District of Columbia; the phrase "trial judge" includes the judge before whom the case was tried or brought to judgment and, in case of his absence from the district, or disability, or death, any other judge assigned to hold, or holding, the court in which the case was tried or brought to judgment; the phrase "appellate court" shall be deemed to refer to the

United States Circuit Court of Appeals and the Court of Appeals of the District of Columbia.

For the purpose of computing time as specified in the foregoing rules, Sundays and legal holidays (whether under Federal law or under the law of the State where the case was brought) shall be excluded.

Section 128 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (U. S. C., Title 28, Sec. 225a):

SEC. 128 (a). The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions— * * *

Second. In the United States district courts for Hawaii and for Porto Rico in all cases.

Section 8 (c) of the Act of February 13, 1925 (U. S. C., Title 18, Sec. 230):

SEC. 8 (c). No writ of error [15] or appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree.

Organic Act for Hawaii (Act of April 30, 1900, as amended) as set forth, so far as pertinent, in U. S. C., Title 48, Secs. 641–645:

DISTRICT COURT

§ 641. District court; sessions; powers; terms. There shall be established in the Territory of Hawaii a district court, to con-

[15] Writs of error were abolished by the Act of Jan. 31, 1928, c. 14, 45 Stat. 54, as amended by the Act of April 26, 1928, c. 440, 45 Stat. 466 (U. S. C., Title 28, Secs. 861a, 861b).

sist of two judges, who shall reside therein and be called district judges, and who shall each receive an annual salary of $7,500. The two judges shall from time to time, either by order or rules of the court, prescribe at what times and in what classes of cases each of them shall preside.

The two judges may each hold separately and at the same time a session of the court (whether at the same or different terms of court, regular or special) and may preside alone over such session. The said two judges shall have the same powers in all matters coming before the court; and in case two sessions of the court are held at the same time, the judgments, orders, verdicts, and all proceedings of a session of the court, held by either of the judges, shall be as effective as if one session only were being held at a time.

Regular terms of said court shall be held at Honolulu on the second Monday in April and October, and special terms may be held at such times and places in said district as the said judges may deem expedient. (Apr. 30, 1900, c. 339, § 86, 31 Stat. 158; Mar. 3, 1909, c. 269, § 1, 35 Stat. 838; July 9, 1921, c. 42, § 313, 42 Stat. 119; Feb. 12, 1925, c. 220, 43 Stat. 890; Dec. 13, 1926, c. 6, § 1, 44 Stat. 919.)

§ 642. Jurisdiction of district court; authority of officers. The said court shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court; and the said judges, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district courts of the United States. (Apr. 30, 1900, c. 339,

§ 86, 31 Stat. 158; Mar. 3, 1909, c. 269, § 1, 35 Stat. 838; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; July 9, 1921, c. 42, § 313, 42 Stat. 119.)

§ 643. Appointment and term of office of judges, district attorney, and mashal. The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint two district judges, a district attorney, and a marshal of the United States for the said district, all of whom shall be citizens of the Territory of Hawaii and shall have resided therein for at least three years next preceding their appointment. Said judges, attorney, and marshal shall hold office for six years unless sooner removed by the President. (Apr. 30, 1900, c. 339, § 86, 31 Stat. 158; Mar. 3, 1909, c. 269, § 1, 35 Stat. 838; July 9, 1921, c. 42, § 313, 42 Stat. 119.)

§ 644. Salaries of clerk and reporter; deputy clerk. A clerk of the district court shall be appointed as provided in section 6 of Title 28, JUDICIAL CODE AND JUDICIARY, at a salary to be fixed in accordance with section 558 of Title 28, JUDICIAL CODE AND JUDICIARY. The number and compensation of deputy clerks shall be fixed by the attorney general as in other judicial districts. The said district judges shall appoint a reporter of said court at a salary of $1,200 per annum. (Apr. 30, 1900, c. 339, § 86, 31 Stat. 158; Mar. 3, 1909, c. 269, § 1, 35 Stat. 838; Mar. 4, 1921, c. 161, § 1, 41 Stat. 1412; July 9, 1921, c. 42, § 313, 42 Stat. 119; June 1, 1922, c. 204, Title II, 42 Stat. 614, 616; Jan. 3, 1923, c. 21, Title II, 42 Stat. 1084.)

§ 645. Appeals. Appeals from the said district court shall be had and allowed to the circuit court of appeals for the ninth judicial

circuit in the same manner as appeals are allowed from district courts to circuit courts of appeal as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. (Apr. 30, 1900, c. 339, § 86, 31 Stat. 158; Mar. 3, 1909, c. 269, § 1, 35 Stat. 838; July 9, 1921, c. 42, § 313, 42 Stat. 119; Feb. 13, 1925, c. 229, § 1, 43 Stat. 936; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54.)

U. S. GOVERNMENT PRINTING OFFICE: 1939.

SUPREME COURT OF THE UNITED STATES.

No. 319.—October Term, 1937.

Robert K. Mookini and Lee Sau Chong, Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 28, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioners were convicted in the District Court of the Territory of Hawaii of violating Section 35 of the Criminal Code relating to fraudulent claims. 18 U. S. C. 80. The verdict was rendered on May 28, 1935; motions for a new trial were overruled on June 19, 1935; and petitioners were sentenced on June 29, 1935. Appeal was allowed by the District Court on September 27, 1935.

The Circuit Court of Appeals, finding that the appeal was not taken in the manner or within the time permitted by the Criminal Appeals Rules promulgated by this Court on May 7, 1934 (Rule III, 292 U. S. 662, 663), dismissed the appeal. 92 F. (2d) 126. In view of the importance of the question as to the application of the Criminal Appeals Rules to the District Court of the Territory of Hawaii, we granted certiorari. — U. S. —.

It is not questioned that the appeal to the Circuit Court of Appeals was allowed within the three months' period specified in Section 8 (c) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 940; 28 U. S. C. 225, 230; 48 U. S. C. 645.

The Criminal Appeals Rules were promulgated pursuant to the Act of March , 1934, amending the Act of February 24, 1933. 28 U. S. C. 723a. The Act authorized this Court—

"to prescribe, from time to time, rules of practice and procedure with respect to any and all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases in District Courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone and Virgin Islands, in the Supreme Courts of the District of Co-

lumbia, Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States".

In order to aid the Court in exercising its authority under the statute, the Attorney General of the United States at the request of the Court submitted on May 26, 1933, a draft of proposed rules. These were expressly limited to proceedings in cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia. The reason for this limitation was thus stated by the Attorney General:

"The Rules are limited in their application to proceedings in cases instituted in the District Courts of the United States and in the Supreme Court of the District of Columbia. There is not sufficient data at hand upon which to predicate proposals at this time relative to practice and procedure in cases instituted in the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, or in the Supreme Courts of Hawaii and Puerto Rico, or in the United States Court for China. It is thought that it would be the part of wisdom to establish the rules for practice and procedure for Continental United States before attempting to provide for the Territories, Insular Possessions and Consular Courts, as these situations will undoubtedly require special treatment because of local conditions and the distance separating the trial court from the Appellate Court".

In considering and revising the draft thus submitted, we approved this suggestion. The rules were accordingly limited to proceedings—

"in criminal cases in District Courts of the United States and in the Supreme Court of the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States". Order of May 7, 1934, 292 U. S. 661.

No provision was made with respect to proceedings in cases brought in the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone and Virgin Islands, in the Supreme Courts of Hawaii and Puerto Rico, or in the United States Court for China. We entertain no doubt of our authority to limit the application of the new rules in this way. The statute empowered the Court to prescribe rules "from time to time" with respect "to any or all proceedings", after determination of guilt, in criminal cases in the

courts which were severally described. The statute contains no requirement that the Court must prescribe identical rules with respect to all the courts mentioned regardless of varying conditions, or that rules for all these courts must be prescribed at one and the same time. On the contrary, the manifest intention of the Congress was to permit the Court to exercise its discretion concerning the application of the rules.

The term "District Courts of the United States," as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under Article III of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a "District Court of the United States". *Reynolds* v. *United States,* 98 U. S. 145, 154; *The City of Panama,* 101 U. S. 453, 460; *In re Mills,* 135 U. S. 263, 268; *McAllister* v. *United States,* 141 U. S. 174, 182, 183; *Stephens* v. *Cherokee Nation,* 174 U. S. 445, 476, 477; *Summers* v. *United States,* 231 U. S. 92, 101, 102; *United States* v. *Burroughs,* 289 U. S. 159, 163. Not only did the promulgating order use the term District Courts of the United States in its historic and proper sense, but the omission of provision for the application of the rules to the territorial courts and other courts mentioned in the authorizing act clearly shows the limitation that was intended.

As the Criminal Appeals Rules were not made applicable to the District Court of the Territory of Hawaii, they did not supersede or alter the provisions of the Act of February 13, 1925, as to appeals from that court to the Circuit Court of Appeals. 28 U. S. C. 225, 230. The provision of the Organic Act of Hawaii (48 U. S. C. 645) to which the court below refers, that appeals from the District Court of the Territory to the Circuit Court of Appeals should be taken in the same manner as appeals from district courts, was always subject to modification in the discretion of the Congress which in its future legislation could make or authorize such distinctions in appellate procedure as appeared to be wise. The Act authorizing this Court to promulgate rules for criminal appeals, which should have the effect of legislation, necessarily modified the former statutory provisions so as to give the Court full authority to prescribe the time and manner of taking appeals and

to leave the Court free to determine to what courts, within the range of the authorization, its rules should apply. Pursuant to this authority, the Court has limited its rules so that they do not govern appeals from the District Court of the Territory of Hawaii and there is nothing in the earlier legislation which compels the extension of the rules beyond their intended and expressed application.

The judgment of the Circuit Court of Appeals is reversed and the cause is remanded to that court for further proceedings in conformity with this opinion.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.